

MINUTES OF THE MEETING OF THE HUMAN SERVICES COMMITTEE  
February 11, 1983

The meeting of the Human Services Committee held at 12:30 p.m. in Room 224A of the Capitol Building on February 11, 1983, was called to order by Chairman Marjorie Hart. All members were present.

HOUSE BILL 445

REP. ELLERD, sponsor, stated this bill is an act to require a nonsmoking area to be designated in all enclosed public places; removing the option of designating the entire area of a public place as a smoking area. Legislation of this type has been enforced in California with 23 million people. He believes it can work in our state of Montana with 800,000 people.

PROPONENTS:

REP. VINCENT stated this piece of legislation is important, is reasonable, is fair and is right; and without question, this piece of legislation is in the best interest of the people. There has been a lot of discussion regarding second-hand smoke and he wanted to alert the Committee to a recent United States Circuit Court of Appeals case in San Francisco in which a federal employee was rewarded \$20,000 after developing breathing difficulty from working in an office with smokers. The Court determined that secondhand smoke can be and often is harmful to one's health. More important than that, I believe this piece of legislation may be mandated by the Constitution of the state of Montana.

"Article 9. Environment and Natural Resources.

1. The state and each person shall maintain and improve a clean and healthy environment in Montana for present and future generations;
2. The Legislature shall provide for the administration and enforcement of this duty; and
3. The Legislature shall provide adequate remedies for the protection of the environmental life support system from degradation."

If the air we breathe is not part of the environmental life support system, then I don't know what is. I think that it is incumbent for us, in the Legislature, to look upon this piece of legislation as something that the Constitution, itself, addresses rather straightforwardly.

DR. SIDNEY PRATT, Chief of the Clinical Programs Bureau of the Division of Health Services and Medical Facilities of the State Department of Health and Environmental Sciences, stated that the Department is supporting HOUSE BILL 445

(EXHIBIT 1).

VERNON SLOAN, State Department of Health, Bureau Chief of Food and Consumer Safety, which is the bureau primarily responsible for the administering of any amendment to be made to this bill. We worked on administration of this bill through local health departments. We have changed the inspection sheets on restaurants to indicate whether they have the proper signing or not. Then they are asked to indicate to the operators of the establishment that they are in violation or compliance with the law. Putting up signs is all that is requested of the restaurant owners. We are getting more calls every year from health-conscious persons. The only solution is if they can talk bosses or owners of public places to put in electric filters in their offices and places of business.

JERRY LOENDORF, representing the Montana Medical Association, stated this bill is in the interest of good health. It is a very reasonable request to impose upon people who smoke to smoke in a designated area.

DOUG OLSON, attorney, representing the Montana Seniors' Advocacy Assistance, wanted to go on record supporting HOUSE BILL 445, amending the Montana Clean Indoor Air Act to require that every enclosed public place subject to the Act provide a place for non-smokers (EXHIBIT 2).

KATHLEEN SMITH, private citizen, stated she was forced to resign because of health problems brought on by being forced to breathe smoke. She requested that the rights of all Montana people be considered.

JUDY OLSON, Montana Nurses' Association, stated in the interest of promoting good health, they strongly support HOUSE BILL 445.

LAUREL MILLHOUSE, private citizen, said that because of the smokers in her office and having to breathe so much cigarette smoke when she exercises, her lungs feel congested and she coughs just like smokers do; her eyes burn and water and her sinuses are clogged, leading to the formation of purplish areas under her eyes. She has a constant sore throat and she has developed the smokers' constant hack. As a result of all this, her doctor has advised her to leave her current position and look for another job. She states that the bill under consideration would give the nonsmokers freedom of choice; they could choose to stay in their current jobs and continue to be unwilling passive smokers, or they can resign and pray that they find other jobs so they can be what they have chosen to be--nonsmokers (EXHIBIT 3).

CLAIRE CANTRELL, Lewis and Clark County Health Department, stated this bill provides for protection of health of a nonsmoker. She stated that the current law is not fulfilling its intent. The present law only requires the posting of signs. The vast majority of public places have chosen to designate entire areas for smokers. HOUSE BILL 445 provides for an equitable treatment of smokers and non-smokers.

WILLIAM LEARY, representing the Montana Hospital Association, stated that the whole hospital is designated as a nonsmoking area; however, there are certain areas where people may smoke--such as, an area in the cafeteria. He said that common courtesy towards our fellowman will go a long way to help people realize that while this is a health care matter, we must be considerate of others.

MIKE HARRINGTON, private citizen, stated that this legislation would do something good for everybody in the state. He was in support of HOUSE BILL 445.

STEVE BOLAS, Consultant, American Lung Association, said that two-thirds of the public are ex-smokers or nonsmokers. Thirty-one states out of the fifty have enacted regulations to provide limitations on smoking; and of the thirty-one states, twenty-two of them have adopted comprehensive Clean Indoor Air Acts.

#### OPPONENTS:

PHILIP W. STROPE, attorney, Montana Tavern Association, was not opposed but wanted to submit an amendment (EXHIBIT 4). With reference to page 2, section 2, the way the statute was written, the only time there could be an exemption for a tavern is if the tavern was also in the restaurant business. With the deletion of certain words, the statute would say "The proprietor or manager of an establishment containing a tavern is not required by this part to designate a nonsmoking area". He stated if you do what you are proposing to do, you are not just cleaning up a few restaurants but every public place there is. The intent of the bill is good but maybe the application and implementation of it may be a bit excessive.

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ROLAND PRATT, Montana Restaurant Association, said he had been directed to oppose the bill in principle. His people feel that the consuming public will have the last word in this situation. They will determine and dictate to the restaurant owners their position on this subject. The mandatory part of it will work some hardship on some of their smaller restaurants.

MARIE DURKEE, read a letter from DONALD W. LARSON, Owner-Manager of Jorgenson's, opposing HOUSE BILL 445 (EXHIBIT 5).

BUTCH REDMOND, private citizen, stated that this bill goes entirely too far and opposed HOUSE BILL 445.

BETTY BABCOCK, Co-owner of the Colonial Inn, stated they are not in the business to accommodate both smokers and nonsmokers. When you have a banquet room that is filled with 500 people, there is no way you can control this problem. She urged the Committee to vote do not pass on HOUSE BILL 445.

TOM MADDOX, Montana Association of Tobacco and Candy Distributors, said the constitutionality of HOUSE BILL 445 is suspect. A Virginia act mandating segregated restaurant smoking and nonsmoking was held unconstitutional by the Virginia Supreme Court. An Illinois 17th Judicial Circuit Court held a restaurant segregation bill unconstitutional by violating the due process section of the Constitution. Federal Judges in Oklahoma and Louisiana held similar laws unconstitutional. The issue has been considered by the Montana Legislature over ten years and in each session, legislators have rejected mandatory segregation as discriminatory (EXHIBIT 6).

REP. ELLERD closed saying he would have to oppose the amendment and that he had to take the side of the two-thirds of the people who do not smoke.

QUESTIONS:

REP. KEYSER to REP. VINCENT: Has Montana Supreme Court ruled that violation of this is unconstitutional by Montana law?

REP. VINCENT: No.

REP. KEYSER: Can you tell me any other states that have ruled that?

REP. VINCENT: No, I can't but I think we have to base any judgments relative to the constitutionality or the lack of constitutionality of this law on the Montana Constitution.

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REP. HANSEN: When I first saw this bill, I wondered why you didn't require a smoking area and leave the rest of the area nonsmoking.

REP. ELLERD: That has been discussed; however, I think it would be more complicated.

REP. JAN BROWN: Is the present law being enforced and has there ever been a fine on this violation.

VERN SLOAN: The law is being enforced and there has never been a fine imposed.

REP. JAN BROWN: I didn't understand Mr. Strobe's proposed amendment. Please explain.

MR. STROPE: The question arises because there is the language on page 2; and if you are going to leave the language on page 2 and strike out the language that is proposed by

REP. ELLERD, then you have to make the minor changes so it will be compatible with the law.

REP. FABREGA: You mentioned the fact that the section that is proposed to be amended by this act would mandate every public area to provide for a smoking area. One possibility there would be on page 1, line 16, designate the entire public area nonsmoking area or reserve a part for nonsmokers.

MR. STROPE: If you leave this bill as proposed, whether or not you accept the amendment I proposed which is for the benefit of the tavern industry, you are forcing every business to have a nonsmoking area. The enforcement of this bill would need additional funds to do that.

REP. FABREGA: To overcome that confusion, the first subparagraph would be amended to say that you can designate the entire public area nonsmoking.

REP. MENAHAN: Could we designate public and state buildings nonsmoking areas as well as grocery stores.

REP. ELLERD: Did not think that would be feasible.

REP. FABREGA: Constitutionally, shouldn't someone be able to designate an entire public area nonsmoking.

REP. VINCENT: I don't know what the statutory provisions of the Constitution would be. If you need a statutory reference as to how you accommodate it, it is in the California statutes. In reference to Mr. Maddox's comment regarding the constitutionality of this segregation, any constitutional argument against this statute based on the Montana constitution is pure fallacy.

REP. KEYSER: Is there a fiscal note for this bill. Is the Health Department seeking additional inspectors to enforce this bill?

REP. ELLERD: No.

Additional information presented (EXHIBIT 7).

CHAIRMAN HART closed the hearing on HOUSE BILL 445.

#### HOUSE BILL 416

REP. JAN BROWN, Sponsor, said this act would allow release of certain general information pertaining to a patient's injury to the news media by a health care facility if a law enforcement authority has reported the injury.

#### PROPONENTS:

CHAD SMITH, Montana Hospital Association, appeared in support of HOUSE BILL 416. There is no exception made for releasing any type of information to the news media. He stated "confidential health care information" means "information obtained by a health care provider relating to the history and condition of the patient". There is an absolute prohibition about giving any type of information. The question arises on this bill--where is the line properly to be drawn. We feel it is not unreasonable under certain circumstances to release some of the primary and basic information--the general condition or the nature of the injury to the press if they come around. The circumstances under this bill for releasing that information are well restricted. There are only certain instances where that information can be released without the consent of the patient: (1) where there is an injury and it is already public record and (2) only as to general nature of the injury. We feel that with these limitations and restrictions, it is not an unreasonable request. We request HOUSE BILL 416 be recorded do pass.

WILLIAM LEARY, Montana Hospital Association, said the hospitals across the state need clarification as to what kind of information they can release.

ARLENE CAMPER, representing St. Peter's Hospital, stated they give no information that would indicate a crime, suicide attempt, or if they are intoxicated or under chemical influence nor do we give descriptions or sizes of wounds. We give a one word statement of condition or a two word description of the injury. We urge support of HOUSE BILL 416 (EXHIBIT 8).

OPPONENTS:

JUDY OLSON, Montana Nurses' Association, talked to both Bill Leary and Ken Rutledge of the Hospital Association, because we are concerned that once you start going into the patient's confidentiality records, very little should be released without consent. From those conversations, it was understood that they were just wanting to tell the news media whether the patient was in stable or critical condition. The matter of the injuries would not be brought up. We would not have any objections but we are concerned about this wording and would feel better if "general nature of the injury" was more clearly defined.

REP. BROWN closed.

QUESTIONS:

REP. BRAND asked REP. BROWN to explain the purpose of the bill a little more clearly.

MS. CAMPER stated that information will be in the paper. The hospital will give the newspaper or news media the name of the patient if they know that relatives are aware of the mishap. There are sources of information that can be gotten--for instance, ambulance reports. They don't list a name but they list that a person was transported to the hospital. The times tie in. Sometimes the information that is reported is accurate but worded in a more disturbing way than if it was just one word. A simple statement of injury would be accurate and the media would not be forced to go beyond that point.

REP. BRAND: Does the patient know what is released?

MS. CAMPER: We never initiate a news release and we never give a name. We respond if the name has been supplied by a law enforcement agency. There would be cases where the patient would not know.

REP. DRISCOLL: What else do you want to report that the patient is in "stable" or whatever condition.

MR. SMITH: The law doesn't allow even the release of that. They get someone at the scene of the accident who doesn't know anything about the patient's condition making some kind of a statement. If it is going to be printed, it ought to be printed with some knowledge of what the diagnosis is.

REP. DRISCOLL: When the paper reports hospital spokesman listed Joe Blow in stable condition, they broke the law.

MR. SMITH: That is right. The law does not allow statements with regard to history or condition. He asked where does personal privacy end and the public's reasonable right to know begin.

REP. JONES: How accurate is the newspaper?

MR. SMITH: I cannot comment on that. I don't know what their policy is. I do know when the name comes up on the police blotter, their next inclination is to come to the hospital and follow up on the condition of Joe Blow. What can we give them, if anything.

REP. SWIFT: The way this bill is written now, how would you know that the report was valid. Would you check with the enforcement agency?

MR. SMITH: Yes.

REP. WINSLOW to JUDY OLSON: Would you rather have this say a condition report rather than a physical condition report?

JUDY OLSON: Yes, that is our concern.

REP. FARRIS: I have a hard time with bills that balance privacy and the public's right to know. Imagine a young lady, cutting a ribbon on a new bridge and she faints in front of 1,000 of her best friends. She is taken to the hospital and is suffering from an ectopic pregnancy. Under those circumstances, what information could the hospital give out?

MR. LEARY: Right now, the hospital would not be able to give out the condition of the patient. If we pass this bill, the only response the hospital could give would be fair, critical or stable. The problem we have is accessibility of information. We would accept the proposed amendment that REP. WINSLOW is about to make so that our new media code in 1982 would state that the desired information must be obtained by the appropriate public agency unless information is given by patient in writing. In the 1982 media code, we do not mention the nature of the cases.

CHAIRMAN HART closed the hearing on HOUSE BILL 416.

#### HOUSE BILL 401

REP. RAY JENSEN, sponsor, stated the purpose of this bill is to delete the provision that excludes casual, periodic, or occasional income in determining grant amounts for public assistance. This bill would make the Montana law consistent with federal law and it would make for more flexibility for county commissioners when they are determining the eligibility of those who are to receive subsistence for different purposes.



PROPOSERS:

JUDITH H. CARLSON, Deputy Director, Department of Social and Rehabilitation Services, said this part of the law was inserted in 1937, two years after the social security law was passed by Congress. We have four different federal programs which require us to count such income--but each requires it be counted differently.. If we obey the federal law, then we are not obeying the state law. We would appreciate your help in allowing us to be consistent (EXHIBIT 9).

OPPOSERS: None

REP. JENSEN closed.

QUESTIONS:

REP. BRAND: For how many years has there been an overlap?

JUDITH CARLSON: In varying amounts since federal laws have changed.

REP. DOZIER: If someone is on ADC or food stamps, can they go out and make \$15?

JUDITH CARLSON: Each program varies. ADC can earn up to \$15 per month and it is not counted.

REP. SWIFT: How many cases have you encountered where the latter part of this sentence as been acceded.

JUDITH CARLSON: In the last three months, we have had two cases where we have had to return to the federal government \$250. These two small cases made us think we were going to have more and more of a problem.

CHAIRMAN HART closed the hearing on HOUSE BILL 401.

HOUSE BILL 312

REP. HART, sponsor, stated this bill will allow the state to prepare a long-range, four-year plan that will be updated every two years. Counties have requested, and the state agrees, that four-year comprehensive, long-term county alcohol and drug plans will be of more value to counties. The annual plan up-date as proposed in my bill will be nothing more than a notification of county priorities for expenditure of funding (EXHIBIT 10).

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PROPOSERS:

CURT CHISHOLM, Deputy Director, Department of Institutions, passed out Statement of Intent (EXHIBIT 11). He stated that one of the specific recommendations was to try to get us out of the burden of short-range annual planning. We concur with this recommendation. We should be more long-range in our thinking and this legislation would get us on a four-year planning cycle. He asked that the Committee concur favorably with this plan.

DICK PALMER, representing Alcoholism Programs of Montana, Inc., appeared in support of this bill.

REP. HART closed showing the extensive report that is to be completed every year.

QUESTIONS:

REP. WINSLOW to CURT CHISHOLM: Are we going to go with the same plan but once every four years.

CURT CHISHOLM: Yes.

REP. MENAHAN: How many new programs have we picked up since raising the licensing from 5 to 10%?

CURT CHISHOLM: Ten.

REP. MENAHAN: Do we have that many more people dried out since all these county programs started.

CURT CHISHOLM: We served 15,000 last year.

REP. MENAHAN: What is the success rate.

CURT CHISHOLM: I don't know that.

REP. MENAHAN: How many various types of programs come under your jurisdiction here in Helena?

CURT CHISHOLM: In Helena, there are three programs. There is the Boyd Andrew Treatment Center which is a state-approved outpatient program; the Shodair Hospital Adolescent Program which is not state-approved; and Sunrise Ranch which is a freestanding non-state approved program. Only the Boyd Andrew Treatment Center is eligible to receive county or state earmarked tax funds.

REP. MENAHAN: Are these other organizations trying to get state money.

MIKE MURRAY: They want state approval.

REP. DOZIER: You alluded to a figure of 15,000 patients last year. Is this based on people put through the program at Galen?

MIKE MURRAY: It is the number pf persons who went through treatment of state and nonstate approved programs that included more than detoxification.

REP. DOZIER: You say that is all the programs in the state that report to you. Does that include private programs like AA--do they report to you.

MIKE MURRAY: AA does not report to us. They are a maintenance program--not a treatment program.

REP. DOZIER: Your 15,000 figure is probably less than half of those that received treatment in the state.

MIKE MURRAY: I would say 75-80%.

REP. BRAND: Is it correct that you will have one form that will handle all the forms.

CURT CHISHOLM: We intend to have a one-page form for the annual update.

REP. CONNELLY: Does this program also include the chemical dependency programs in the county.

MIKE MURRAY: The drunk driving programs are operated through the Department of Justice. The courts so far have only designated state-approved alcohol programs. The answer is yes.

REP. CONNELLY: They do get money from the Department of Institutions?

MIKE MURRAY: The court-school program is separate. The individuals you are referred under a D U I sentence pay their own costs.

VICE-CHAIRMAN FARRIS closed the hearing on HOUSE BILL 312.

EXECUTIVE ACTION  
HOUSE BILL 328

REP. FARRIS, sponsor, submitted amendments and discussed them (EXHIBIT 12). The Statement of Intent was also passed out (EXHIBIT 13).

REP. FARRIS moved HOUSE BILL 328.

REP. FARRIS moved the adoption of the amendments.

QUESTIONS:

REP. BRAND: What are you really doing?

REP. FARRIS: The fiscal note gave us the real clue that the bill was incorrect. The kinds of inspections that are done now are different from what the Legacy Legislature wants done. Mr. Hoffman stated they would hire two people who would travel throughout the state doing the inspections. Everybody would

be visited, but not consecutively.

REP. WINSLOW: Would it be possible for the inspection teams to go in and do one of these inquiries so we could save some money.

REP. FARRIS: According to Mr. Hoffman, it would increase the costs. The licensing and certification are combined and there is state Medicaid and Medicare in the inspections. Two-thirds of that is paid by the federal government and one-third by the state. If we add this in, the federal government won't pay any of it. We would not be able to tie this to the annual inspections.

REP. KEYSER: What is the new fiscal note on this?

REP. FARRIS: There isn't one. The new language is conforming to the old one.

REP. FABREGA: The amendment makes the bill coincide with the fiscal note.

The motion of adopting the amendments was voted on and passed unanimously.

REP. FARRIS moved that HOUSE BILL 328 DO PASS AS AMENDED. The motion passed with REP. SOLBERG voting no.

REP. FABREGA moved DO PASS on the Statement of Intent. The motion passed unanimously.

#### HOUSE BILL 284

REP. WINSLOW, sponsor, moved that HOUSE BILL 284 DO PASS.

He presented the amendments and discussion followed (EXHIBIT 14).

REP. FABREGA: Just for clarification, in order to qualify to be licensed they have to have a master's degree and that is stated by how?

REP. WINSLOW: Reference was made to licensing requirements, page 6.

REP. BRAND: Are the third-party payments in the amendments?

REP. WINSLOW: No. On the top of page 13, it talks about it being listed as an optional insurance coverage.

REP. BRAND: HOUSE BILL 274 talks about professional counselors. Can you modify these amendments to handle that problem.

REP. WINSLOW. No. That is a separate bill; and, although I signed on that one, I think that is a more difficult bill to justify than this one is because that is talking about such a broad range of counselors.

REP. FABREGA: The need for this act is to allow third-parties to pay for these services. If you are not licensed, they won't pay. Is that correct.

REP. WINSLOW: That is one of the reasons. But they are not necessarily going to pay anyway.

REP. BRAND: How about the certification regarding the university system?

REP. WINSLOW: We changed that by taking out "master's of" and adding "licensed".

REP. CONNELLY moved that the amendments be adopted. The motion passed unanimously.

REP. WINSLOW moved that the Statement of Intent be accepted (EXHIBIT 15). The motion passed with REP. BRAND voting no.

REP. WINSLOW moved that HOUSE BILL 284 DO PASS AS AMENDED.

REP. HART asked if the director of the Human Resources Development Council for nine counties would be required to have a master's.

REP. WINSLOW. No.

The motion that HOUSE BILL 284 DO PASS AS AMENDED passed with REP. BRAND voting no.

#### HOUSE BILL 269

REP. BROWN, sponsor, moved HOUSE BILL 269 DO PASS.

REP. FABREGA passed out amendments (EXHIBIT 16). He stated that there was some concern in his mind as to what this millage was for. Testimony showed it was for programs--not for buildings. The amendment that w e r e passed around would clarify that this millage is for training of operators.

REP. FABREGA moved that the amendments be accepted.

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REP. BROWN opposed the amendment.

REP. FABREGA stated he could not support the bill without the amendment because he did not want the county to build a day care center. He believes there is value in the program to train them to provide a good center. He did not think they should be able to lease a building and start a day-care center.

REP. HANSEN: Suppose the community who had no day-care center wanted to use this money to lease a building and start a day-care center. Then that would prevent them from doing it. The intent is to help communities provide day care.

REP. FARRIS: If we inserted the words "use by" after "fund for" it would be to establish a fund for use by licensed day-care centers. That would prevent the county from establishing one using this money so there would be no competition; and yet, it could be used in a wide variety of ways.


REP. FABREGA: That would lead someone to think he could go to the county and ask for a grant to buy furniture and establish his day-care center.


REP. FARRIS: The county commissioners are going to do what the local people want done. They are not going to do something contrary to the Constitution or against the members of their county. This simply enables counties to tap some money if the county needs it.

REP. FABREGA: I am concerned about what happened to the Vo-techs. It put out every private vocational school operation. Do we want the same to happen in an area of service. I cannot support the bill to put the county in competition with housewives who are running day care centers.

REP. BROWN requested that we defer HOUSE BILL 269 to the next executive session.

The meeting adjourned at 2:45 p.m.

  
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CHAIRMAN MARJORIE HART

  
\_\_\_\_\_  
Secretary

Ex 1  
HB445

TESTIMONY BEFORE THE HOUSE COMMITTEE ON HUMAN SERVICES  
February 11, 1983

Madam Chairman and Members of the Committee: For the record, I am Dr. Sidney Pratt, Chief of the Clinical Programs Bureau of the Division of Health Services and Medical Facilities of the State Department of Health and Environmental Sciences. I am here representing the State Department of Health and Environmental Sciences in order to enter into the record the statement that the Department is supporting HB445.

From a public health viewpoint, this is an appropriate amendment to Section 50-40-104, the Montana Clean Indoor Air Act.

Thank you.

# MONTANA SENIORS' ADVOCACY ASSISTANCE

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24.2  
H.B. 445

DOUGLAS B. OLSON, Attorney  
Elderly Legal Services Developer

LENORE F. TALIAFERRO  
Montana State Nursing Home Ombudsman

February 11, 1983

Members,  
House Human Services Committee  
Montana House of Representatives  
48th Legislature  
State Capitol  
Helena, Montana 59620

re: House Bill 445

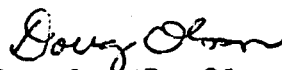
Dear Representatives:

Montana Seniors' Advocacy Assistance (MSAA) would like to go on record supporting House Bill 445 sponsored by Rep. Ellerd of Bozeman. This bill would amend the Montana Clean Indoor Air Act to require that every enclosed public place subject to the Act provide a place for non-smokers.

Of primary concern are restaurants. Many senior citizens suffer from lung diseases which can be aggravated from exposure to cigarette smoke. As the attached article from the April 29, 1982, edition of the Great Falls Tribune, page 6-A, states, nonsmokers do suffer from smoke-filled air. The article cites studies reported in the well-repected New England Journal of Medicine that show that, "'passive smoking.' or being forced to inhale the air polluted by smokers, does significantly affect the lung function and the decreased lung function can be measured." The traveling public is often forced to decide whether to eat in a restaurant with no provisions for the nonsmoker or not to eat at all. This bill will remedy this dilemma by requiring that provisions be made for nonsmokers.

This bill does not ban smoking in restaurants and other enclosed public places but rather requires the managers of these places to be considerate of the majority of our citizens who do not smoke and who do not want their health to suffer as a result of others who do smoke. "Passive smoking" is a public health problem that this bill will take positive steps to eliminate.  
Thank you.

Sincerely,



Douglas B. Olson  
Attorney

attachment



# Nonsmokers do suffer from smoke-filled air

By MONTE GAGLIARDI  
Montana Extension Service

If you are a nonsmoker, do you need to be concerned about being exposed to tobacco smoke? Is it an unnecessary hazard to your health?

Compared to the smoke inhaled, there is twice as much tar and nicotine from the burning end of a cigarette, five times as much carbon monoxide, and 46 times as much ammonia. There are approximately 4,000 compounds generated by burning tobacco.

Studies have shown that newborn children of smoking parents are twice as likely to develop pneumonia or bronchitis in the first year of life.

Studies of the respirable suspended particulates (RSP) in indoor and outdoor environments in relation to smoking by the Environmental Protection Agency showed that "under the practical range of ventilation conditions and building occupation densities, RSP levels generated by smokers overwhelm effects of ventilation and inflict significant air-pollution burdens on the public."

In an independent investigation from the University of California, reported in the "New England Journal of Medicine," Doctors J.R. White and H.F. Frobe wrote, "We conclude that chronic exposure to tobacco smoke in the world environment is deleterious to the nonsmoker and significantly reduces small airways function." The inves-

tigators demonstrated conclusively that "passive smoking," being forced to inhale the air polluted by smokers, does significantly affect the lung function and the decreased lung function can be measured.

Many of the studies of the harmful effects of passive smoking are based on studying healthy people. The harmful effects of secondhand tobacco smoke can be much greater on those who have some illness.

Dr. W.S. Aronow of the Long Beach Veterans Administration Hospital has studied the influence of passive smoking on men who have coronary artery disease and develop angina pain during exertion.

He had men sit in a room with smokers and then tested them to determine how much exercise they were able to do before developing heart pain. Exposure to a room with smokers significantly decreased the amount of exercise the men could do before the pain started.

He also noted an increase in blood pressure and irregular heartbeats after the patients were exposed. The irregular heartbeats could be serious, as such beats in heart patients may be the beginning of a serious and sometimes fatal heart irregularity.

Obviously the patient who has a pulmonary disease, such as asthma or chronic bronchitis, should not have the added burden of exposure to air polluted with tobacco smoke.

MY NAME IS LAUREL MILLHOUSE. FOR THE PAST TWO YEARS I HAVE WORKED IN AN OFFICE OPEN TO THE PUBLIC WHERE THE CIGARETTE SMOKE IS SO THICK THAT IT CAN ACTUALLY BE SEEN AS A LOW-HANGING CLOUD (A FACT ABOUT WHICH VISITORS OFTEN REMARK). THOSE OF US WHO HAVE CHOSEN TO BE NONSMOKERS ARE FORCED TO BREATHE IN A TREMENDOUS AMOUNT OF SMOKE EACH DAY. I NOW HAVE HEALTH PROBLEMS AS A DIRECT RESULT OF MY WORKING CONDITIONS; I HAVE NEVER BEFORE EXPERIENCED THE KINDS OF PROBLEMS I NOW HAVE, EVEN THOUGH I'VE WORKED IN OTHER OFFICES WITH SMOKERS. I HAVE EVEN LOST PROSPECTIVE EMPLOYEES, WHO NEEDED THE WORK, BECAUSE THEY WERE APPALLED BY THE HEAVY SMOKE.

OUR OFFICE IS IN AN OLD BUILDING THAT HAS NO AIR EXCHANGE SYSTEM, AND TO FURTHER COMPLICATE MATTERS, THE OFFICE IS MAINLY A LARGE OPEN SPACE, WITH FEW WALLS. THERE ARE A LOT OF PEOPLE CROWDED INTO THAT SPACE, AND THE MAJORITY OF THEM ARE SMOKERS. WHEN OBJECTIONS ARE RAISED, THOSE WHO SMOKE POKE FUN AT THOSE WHO DON'T, AND NOTHING IS DONE TO ALLEVIATE THE SITUATION. I'M LUCKY: I HAVE MY OWN OFFICE. I CAN SHUT THE DOOR, RUN AN EXPENSIVE AIR CLEANER, AND OPEN THE WINDOW. BUT I STILL HAVE TO LEAVE MY OFFICE FREQUENTLY DURING THE DAY AND SPEND TIME IN THE SMOKE-FILLED OPEN AREA, OR ATTEND A MEETING IN ANOTHER OFFICE. SO THERE REALLY IS NO EXCAPE FROM THE BAR-LIKE ATMOSPHERE OF OUR WORKPLACE.

WHEN I EXERCISE, MY LUNGS FEEL CONGESTED AND I COUGH JUST LIKE SMOKERS DO; AT WORK AND OFF, MY EYES BURN AND WATER AND MY SINUSES ARE CLOGGED, LEADING TO THE FORMATION OF PURPLISH AREAS UNDER MY EYES. I HAVE A CONSTANT SORE THROAT, AND I HAVE

DEVELOPED THE SMOKERS' CONSTANT HACK. AS A RESULT OF ALL THIS, MY DOCTOR HAS ADVISED ME TO LEAVE MY CURRENT POSITION AND LOOK FOR ANOTHER JOB.

WITH THE CURRENT ECONOMIC CLIMATE, IT'S DOUBTFUL THAT I'LL BE ABLE TO OBTAIN AN EQUIVALENT POSITION ELSEWHERE. IN FACT, I WILL PROBABLY HAVE TO TAKE A LARGE PAY CUT. AND ALL BECAUSE THE STAFF MEMBERS WHO SMOKE REFUSE EVEN TO RESTRICT THEIR SMOKING TO ONE AREA, LET ALONE BAN SMOKING IN OUR OFFICE, AND BECAUSE THE BOSS IS A HEAVY SMOKER, THERE IS NO PRESSURE TO DO SO.

THE BILL UNDER CONSIDERATION BY THIS COMMITTEE WILL GIVE US NONSMOKERS OUR FREEDOM OF CHOICE; OUR CHOICES NOW REFLECT LITTLE FREEDOM FOR US: WE CAN CHOOSE TO STAY IN OUR CURRENT JOBS AND CONTINUE TO BE UNWILLING PASSIVE SMOKERS, OR WE CAN RESIGN AND PRAY THAT WE FIND OTHER JOBS SO WE CAN BE WHAT WE HAVE CHOSEN TO BE: NONSMOKERS.

EX 4  
HB 445

NAME: PHILIP W. STROPE DATE: 2/11/83

ADDRESS: 501 North Sanders, Helena, Montana 59601

PHONE: 442-6570

REPRESENTING WHOM? MONTANA TAVERN ASSOCIATION

APPEARING ON WHICH PROPOSAL: HB 445

DO YOU: SUPPORT? AMEND? X OPPOSE?

COMMENTS: The following amendments are proposed:

1. Title, line 7.  
Following: "AREA;"  
Insert: "REMOVING REDUNDANT LANGUAGE;"
2. Page 2, line 6.  
Following: "containing"  
Delete: "both a restaurant and"
3. Page 2, lines 6 and 7.  
Following: "tavern,"  
Delete: "in which some patrons choose to eat their meals in a tavern,"
4. Page 2, lines 9 and 10.  
Following: "area"  
Delete: "in the tavern area of the establishment"

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

*Georgeanna*  
HOLIDAY

MOTEL - RESTAURANT - LOUNGE  
COMPLETE BANQUET AND CONVENTION FACILITIES  
1720 ELEVENTH AVENUE      PHONE 442-6380  
HELENA, MONTANA 59601

Ex 5  
HB 445

STATEMENT IN OPPOSITION TO HB445 AT THE HEARING BEFORE THE HOUSE  
HUMAN SERVICES COMMITTEE, FRIDAY, FEBRUARY 11, 1983.

Ours is a family-owned enterprise. We have been a part of the business community in Helena for almost 33 years. If we are recognized as having gained a measure of success, it must be attributed in great part to the fact that we strive to maintain a sincere concern for the customers who have patronized our place of business over the years.

Yet it seems that in every session of the Legislature lately we must defend ourselves against bills such as this which do nothing more than give government another opportunity to interfere with the conduct of our business and our relationship with our customers.

Governor Schwinden is quoted in this morning's papers as saying that current economic conditions are the most troublesome since 1961. I don't think anyone in business would argue with that. This is the time when government should be giving some encouragement to those of us who have been able to keep our doors open and keep people on a payroll, not throwing more obstacles in our path.

HB445 makes state government a partner of ours. We neither need nor want another partner, particularly the State of Montana. We neither need nor want another unenforceable, harassing law on the books.

Our customers are going to tell us whether they want segregation in our establishment, and we'll respond to them because we value their patronage and we need it to survive, as any business person must recognize.

The American public has been trying to get this message across: "Government, get off our backs." We hope this committee will give realistic consideration to the countless problems bills such as this create and recommend that HB445 be soundly rejected by this Legislature.

*Donald W. Larson*  
DONALD W. LARSON  
Owner-Manager

WITNESS STATEMENT

Name THOMAS W. MADDOX Committee On HUMAN SERVICES  
Address PO Box 123, HELENA MT 59624 Date 02/11/83  
Representing MONTANA ASSOCIATION OF TOBACCO Support \_\_\_\_\_  
AND CANDY DISTRIBUTORS INC.  
Bill No. HB 445 Oppose ☒  
Amend \_\_\_\_\_

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. WE SUBMIT THAT CONSTITUTIONALITY OF HB 445 IS SUSPECT. A VIRGINIA ACT MANDATING SEGREGATED RESTAURANT SMOKING/NON SMOKING WAS HELD UNCONSTITUTIONAL BY THE VIRGINIA SUPREME COURT. AN ILLINOIS 17TH JUDICIAL CIRCUIT COURT HELD A RESTAURANT SEGREGATION BILL UNCONSTITUTIONAL, BY VIOLATING DUE PROCESS SECTION OF CONSTITUTION. FEDERAL JUDGES IN OKLAHOMA AND LOUISIANA HELD SIMILAR LAWS UNCONSTITUTIONAL.
2. The issue has been CONSIDERED BY MONTANA LEGISLATURES OVER 10 YEAR AND IN EACH SESSION LEGISLATORS HAVE REJECTED MANDATORY SEGREGATION AS DISCRIMINATORY.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

TO: THE MONTANA HOUSE OF REPRESENTATIVES  
COMMITTEE ON HUMAN SERVICES

RE: HB445 - MANDATORY SEGREGATION OF ALL PUBLIC PLACES  
EXCEPT TAVERNS.

On Friday, February 11, 1983, the committee had inadequate time to hear four bills, resulting from time taken by 13 proponents in presentations and support, plus time taken in proponent rebuttal on HB 445.

In view of the shortened time available for opponents of HB445, and as the last opponent, I beg the indulgence of individual committee members to accept, and to read, the testimony which had been prepared but which time did not allow delivery.

There is a more balanced presentation from both sides if committee members will fairly take the few minutes to read the enclosed presentation. It provides a perspective and legal research not provided otherwise to the committee.

Thank you for your consideration.

Sincerely,



Thomas W. Maddox, Executive Director  
Montana Association of Tobacco and Candy Distributors  
P. O. Box 123,  
Helena MT 59624

Enclosure:

Montana Association of

# Tobacco and Candy Distributors

1777 LeGrande Cannon Blvd., P.O. Box 1 2 3, Helena, MT 59601 Telephone (406) 442-1582

Tom Maddox,  
Executive Director

COMMITTEE ON HUMAN SERVICES  
HOUSE OF REPRESENTATIVES

R E : H B 4 4 5

CITES ON CONSTITUTIONAL RULINGS, *fatally defective* ADVERSE TO

THE THRUST OF HB445, ARE:

#1 OKLAHOMA CASE

Kensell vs. Oklahoma, governor et al

CIV-81-786-T (W. D. OK 1982)

#2 LOUISIANA CASE

Gaspar vs. Louisiana Stadium,  
and Exposition Corporation

418-F- SUPP. 716 (E. D. LA  
1976)

AFFIRMED

F. 2D 897 (5th Circuit 1978)

CERT. DENIED.

439 U. S. 1079 (1979)

#3 ALFORD vs. Newport News, Virginia

Record number

790 - 322, Circuit Court  
of Newport News, Virginia

NOTE: All available in Montana Supreme Court Law Library.

Summary of these and other cases, bearing on constitutional questions on HB445,  
included in presentation by Tom Maddox February 11, 1983



House BILL NO. 157

INTRODUCED BY

~~Holmes - FINGER~~ Bennett  
~~Stacy~~ Watt HAINES MARBUT

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROHIBIT OR RESTRICT  
SMOKING IN PUBLIC PLACES."

*Hal Hays*

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF  
MONTANA:

Section 1. Smoking shall be prohibited in all places  
of public resort, accommodation, assemblage or amusement, as  
defined by section 64-302(5), capable of accommodating more  
than thirty (30) people or restricted to a specific  
well-ventilated area within the public place.

-End-

To: Forty-eighth Session, Montana Legislature

Re: Opposing comments on HB445; mandatory segregation of public places.

Montana House Bill 445 should not be enacted for many reasons. Ten of these reasons why HB445 should be killed are summarized here, with supporting detail in ensuing pages:

1. Understanding the history of the subject supports a vote that HB445 do not pass. Over 10 years the Montana legislature has rejected the more excessive proposals in a series of such bills.
2. Federal, state and district court case law have ruled such acts unconstitutional. Study the attached summary of cases.
3. HB445 is patently excessive; to a degree that the state would be vulnerable to challenge in court, with probability of costly defeat.
4. HB445 is anti-economy, anti-recovery legislation in hard times.
5. HB445 is vague in requirements for compliance and in instructions to operators of public places and to potential of violations by citizens -- basic points in unconstitutional rulings by courts.
6. HB445 would impose such exercise of Big Government police action as to invite court challenge.
7. HB445 provides no enforcement funding, subjecting government to contempt for imposing law without enforcement.
8. HB445 is creeping legislation--part of a longrange scheme to outlaw tobacco smoking; to adjust individual behaviour, liberties.
9. HB445 is counterproductive to the administration's state building program (HB511), and other legislative expressed goals.
10. The present Montana Clean Indoor Air Act is working, reasonable, acceptable to a majority, and without risk of court challenge.

---

Please see ensuing pages of material supporting digested comments. More detail, facts, texts and references are available on request. Thank you.

Tom Maddox, Executive Director, Montana Association of Tobacco and Candy Distributors, P. O. Box 1 2 3, Helena MT 59624  
Telephone (406) 442 - 1582

To the Hearing Committee:

My name is Tom Maddox. I have worked with the Montana legislature each session since 1953; the past 20 years as executive director for the Montana Association of Tobacco and Candy Distributors. Members of this association are among the hearing observers. They have requested me to convey their opposition to HB445, and to recommend that the Montana Clean Indoor Air Act continue in its present form as provably workable.

1. Brief history. Montana's legislature considered a bill to prohibit cigarette smoking in all public places in 1973 (HB157). A copy of that bill is attached for your study. That bill 10 years ago proposed excessive police state action, and with all other bad features of HB445, the legislature wisely rejected that bill.

Each session since then, an antismoking bill has been proposed. A bill was finally enacted which provided the title, "Montana Clean Indoor Air Act"; without penalty for violation; without funding for enforcement, although appropriation was requested by counties' and the state health employees; and the bill redundantly called for no smoking or restricted smoking in elevators, hospitals and other areas--some of which had been covered in other Montana statutes for years. In 1979 the act was amended to require public places (except taverns) to post signs at entrances to inform the public whether the premises provided nonsmoking or smoking areas or was not so segregated. In 1981 the act was amended again, to clarify application to food service areas with service of alcoholic beverages in conjunction with an exempt tavern.

Each amendment over the years fell short of original excessive demands in introduced bills. Over 10 years the legislature has listened carefully to the problems of antismokers, and of compliance among many kinds of businesses, weighed the costs of compliance versus the benefits, costs of enforcement, the overall impact on the public, and ultimately rejected more excessive demands, and respected the right of consumers to influence mutual courtesy. The educational process works.

2. Tests of time. Over the 10 years antismoking laws enacted in some states began to be tested in the courts, and be thrown out as unconstitutional.

Three federal trial court judges and courts in two states --- in a total of four states and the District of Columbia --- have ruled against antismokers' claims of constitutional rights. Montana's 1972 constitution is in strong agreement with the Federal Constitution.

In Louisiana U. S. District Judge Jack Gordon ruled that "to hold that the First, Fifth, Ninth and Fourteenth Amendments recognize as fundamental the right to be free from cigarette smoke would mock the lofty purposes of such amendments." This case involved antismokers' suit against the Superdome in New Orleans. They claimed constitutional right to attend events in the facility was violated by smokers.

Judge Gordon rejected their claim. They appealed. The United States Supreme Court refused to overturn Judge Gordon's decision.

Federal case law was articulated by Judge Gordon. His ruling declared in part that if the judiciary were to prohibit smoking, it would be creating a legal avenue, heretofore unavailable through which an individual could attempt to regulate the social habits of his neighbor.

"This court is not prepared to accept the proposition that life-tenured members of the federal judiciary should engage in such basic adjustments of individual behaviour and liberties."

Consistent with the developing Federal case law in this subject area, Federal District Court Judge Ralph Thompson ruled that the state of Oklahoma to deny an employee a smoke free work area "hardly constitutes a violation of constitutional magnitude."

Judge Thompson's ruling declared, "The Constitution simply does not provide a judicial remedy for every social and economic ill."

The Oklahoma Federal court ruling that there is no constitutional right to a smoke free environment was against the plaintiff Anthony Kensell, employed 11 years by the Oklahoma Department of Human Services. In 1981 Kensell sued the state, Oklahoma's governor and state officials for \$12 million. Kensell's lawyers claimed the defendants were guilty of "pulmonary trespass of tobacco smoke pollution."

In legal briefs, lawyers claimed unsuccessfully that the state's refusal to provide a "smoke free" work place violated Kensell's rights under the First, Fifth, Ninth and Fourteenth Amendments to the Constitution. Kensell claimed respiratory and cardiovascular problems, headaches, eye irritation and mental suffering because he had to work near smokers. He asked \$10.5 million, and got nothing. Enactment of HB445 in Montana would subject the state of Montana to possible court action, with expense of time, dollars and adverse public relations, even without some court judgment.

Federal Judge Thompson's decision states:

"For the Constitution to be read to protect nonsmokers from inhaling tobacco smoke would be to broaden the rights of the Constitution to limits heretofore unheard of.

"The Constitution simply does not provide a judicial remedy for every social and economic ill."

A THIRD FEDERAL COURT RULING dismissed a suit against the federal government by Federal Employees for Nonsmokers Rights (FENSR) and by GASP or Group Against Smokers' Pollution. In Washington, D. C., they claimed "protection" against tobacco smoke under the Occupational Safety and Health Act (OSHA), and under the First and Fifth Amendments to the U. S. Constitution, and the common law.

Federal Judge Charles R. Richey's dismissal of these claims was affirmed by the U.S. Court of Appeals for the District of Columbia. The United States Supreme Court refused to overturn lower court rulings that the government is not required to segregate smokers and nonsmokers in work areas.

VIRGINIA SUPREME COURT held unconstitutional an antismoking act which mandated restaurants to have a non-smoking section.

Mrs. Phyllis Alford refused to provide a no-smoking area in her Newport News, Virginia, restaurant. She contended government had "no right to tell me where to seat my customers." She called it "a foolish law" and the state supreme court concurred.

Virginia Supreme Court justices ruled the act "an unconstitutional exercise of police power."

The justices concluded:

"The requirement to designate one of several dining tables located in the same room as a nonsmoking area hardly limits the amount of smoke in the air."

THE ILLINOIS 17TH JUDICIAL CIRCUIT COURT ruled unconstitutional an act to require designated smoking areas in restaurants.

A restaurant owner claimed the act violated equal protection and the due process provision of the Constitution, and the court upheld this claim.

Quoting from the Illinois court memorandum of decision on due process, it stated that law "shall not be vague, indefinite or uncertain; additionally, it must provide sufficient standards to guide policing agencies and the courts in the administration...."

Such segregation acts, the decision stated, "which are so incomplete, vague, indefinite, and uncertain that men of ordinary intelligence must necessarily guess at their meaning and differ as to their application are unconstitutional as denying due process . . . under our state and national Constitutions."

HB445 as introduced is vague as to application, area size, percentage of premises, other specifics.

3. HB445 IS EXCESSIVE in requirements --- excessive above and beyond the original Montana 1973 bill (HB157) attached. Many business places would be unable to comply; others perhaps at exorbitant cost. Segregation of city, county, state government buildings could be provided at heavy costs to taxpayers. Courts have held that segregation in the same room or hall without wall divisions is no solution to controlling ambient smoke. Worse than the 1973 bill, the 1983 HB445 provides no option for declaring a whole premise as a no-smoking area. Current law provides options to respond to the consuming public who, in the final analysis, has the last word to select the businesses or places they will support or patronize. (In Montana, hundreds of public places on federal reservations --- (the Indians, military and Veterans Hospital -- and other federal (places or offices -- would be exempt. )

4. HB445 is antibusiness, at a time when our Montana economy needs all help it can get---not "roadblocks" of unwarranted expense and threats of police action. As an example: Montana is seeking conventions -- regional and national. Convention centers' space limits make impossible compliance of segregating 600, 500 or so for a banquet, or convention proportion business conference. HB445 would dictate restaurants to assign waitresses to segregated areas, which would inevitably incur little occupancy during some shifts, yet IRS assesses waitresses' income tax on tips, as a percentage of gross restaurant income, whether such amount of tips, is collected or not, making possible a charge of discrimination if HB445 is enacted and enforced.

5. Vagueness of HB445 would leave the sensitive determination of satisfactory compliance in the hands of possibly unsympathetic government employees. Case law has held that legislation which is too vague and not sufficiently instructive is not satisfying constitutional requirements for due process.

6. The law and Big Government can not legislate courtesy and good manners, yet HB445 would attempt to do this for a relatively few offensive smokers. In "counting" the majority involved or trying to determine the balance of citizens affected, we remind that the figures of 60% nonsmokers, 40% smokers among our adults have been bandied about, with no real basis in fact for Montana; or similarly figures such as two-thirds vs. one-third. Moreover, common sense tells us that whatever the percentage of nonsmokers, in this group there is a relatively small percentage of antismokers, versus the heavily-taxed tobacco smokers, heavily taxed persons who enjoy smokeless tobacco and nonsmokers who tolerate or enjoy the aroma of good tobacco.

7. In the past the state Health Department employees and county health employees have asked for more appropriation to fund policing such a bill as HB445. No fiscal impact note for HB445 has been provided. The media reports the State Health Department director has already complained against a proposed 20 per cent cut in his agency budget, including reduction in state health services, and in legal services. Law imposed without provision for honest enforcement subjects government, and legislators to erosion of respect from citizens.

8. HB445 falls in the pattern of "creeping legislation", in line with our alert to the legislature in 1973 and in 1977. Testimony on March 3, 1977 stated that the 1977 HB174's poor construction laid the groundwork for demands for more "teeth", more enforcement, more enforcement affecting more people, affecting more businesses and public places, and asking more taxpayers' dollars for funding. HB445 is riding on the same level of support, and emotional testimony that prevailed in the early 1970s. Current law is provably adequate for the majority, without unnecessary costs of compliance and policing or administration.

9. HB445 IS COUNTERPRODUCTIVE. HB445 represents ambivalence among legislators within parties, among the administrative leaders and staff personnel.

Thinking behind HB445 is not in harmony with state executive leadership goals and goals of individuals among legislators. The impact of HB445 would be to reduce state revenues in cigarette sales taxes due to restrictions among cigarette users. The administrative leadership, and legislative supporters of administration bills have made public concessions that it is counting heavily upon collecting more cigarette sales taxes (HB511) for long years to dedicate our state's assets for long-range construction of more state buildings. HB445 is counterproductive to these state building goals.

10. Voluntary compliance to the problems of antismokers and more courtesy among cigarette smokers in some 15 months of operation under the 1981 Montana Clean Indoor Air Act amendments is improving the over-all conditions. Many restaurants now are equipped with expensive clean or fresh air filters and removal systems for foul air --- smoke and other foul air. More and more restaurants are volunteering offers to arriving customers of tables or booths in nonsmoking sections. These continuing efforts work because it is good business, and because the consuming public has the final word on the success or failure of business which is dependent upon consumers' approval in the long run.

IN CONCLUSION, we recommend that the committee table HB445.

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EX7  
HB445

City-County Building  
316 North Park  
Helena, Montana 59623  
Telephone 406/443-1010

# LEWIS AND CLARK COUNTY

## Health Department

### Comments in Support of House Bill 445

LuAnn Driessen, R.N.      Stan Walthall, R.S.  
Lewis and Clark City-County Health Department

The Lewis and Clark City-County Health Department strongly favors and supports the passage of HOUSE BILL 445 because it provides for the protection of the health of the nonsmoker by requiring the designation on nonsmoking areas in public places.

The intent of the Montana Clean Indoor Air Act is to:

1. PROTECT THE HEALTH OF NONSMOKERS IN PUBLIC PLACES, and
2. TO PROVIDE FOR RESERVED AREAS IN SOME PUBLIC PLACES FOR THOSE WHO SMOKE

The problem is that the current law is not fulfilling its intent.

The present law only requires the posting of signs which tell whether an area is designated as all smoking or whether a nonsmoking area has been reserved.

The vast majority of public places have chosen to designate the entire area for smoking.

For example, of approximately 70 full menu restaurants in Helena, less than 10% have designated nonsmoking areas.

While this has disproportionately fulfilled the intent of present law to provide for reserved areas in some public places it has not protected the health of non-smokers in public places. The required designation of nonsmoking areas in HB445 would correct this problem.

Why is it important to provide nonsmoking areas?

Being in a smoke filled room is not only an irritant but an actual threat to health. Research has shown that second-hand smoke can be as harmful if not more harmful to the nonsmoker.

There are two kinds of smoke: mainstream smoke which the smoker pulls through the mouthpiece of cigarette, cigar or pipe and, sidestream smoke which goes directly into the air from the burning end.

Studies have shown that sidestream smoke in comparison to mainstream smoke contains:

- twice as much tar and nicotine
- three times as much 3-4 benzpyrene (a carcinogen)
- three times as much carbon monoxide which robs the blood of oxygen
- fifty times as much ammonia, and
- elevated levels of a cadmium - one of the compounds that damages air sacs and cause emphysema.



Studies have also shown that after only thirty minutes in a smoke-filled room the carbon monoxide level in the nonsmokers blood increases as does the blood pressure and heart beat. This condition may result in adverse reactions from people with heart disease.

Tobacco smoke may cause an allergic reaction, asthmatic attack, and bring on chest pains. It will cause a reduction in exercise tolerance and may bring on a heart attack.

Children are particularly sensitive to the effects of side stream smoke. Respiratory problems are often directly proportional to the amount of smoke in the child's environment.

Reports show nonsmokers have the following symptomatic effects when working near smokers:

- difficulty in working
- being forced to move from their desks
- eye irritation
- nasal irritation
- coughing
- sore throat or sneezing
- exacerbation of preexisting pulmonary condition
- aggravation of a cardiovascular disorder,
- allergic reaction to smoke
- nonsmokers frequently or always react to tobacco smoke with frustration or feel hostile toward the smoker or management
- some have even had to use their sick leave because they could not tolerate the smoke around them.

A study of long term effects of both voluntary and involuntary smoking found that chronic exposure to tobacco smoke in the work environment reduced airway function in nonsmokers to the equivalent of that in smokers who consumed from one to ten cigarettes daily. Small airway disease precedes crippling diseases such as emphysema.

In two epidemiological studies an increase risk of lung cancer was found in nonsmoking wives of smoking husbands. The risk increased in relation to the extent of the husbands smoking.

A nationwide government survey revealed that 78% of employees, including 70% of smokers agreed that employers have the right to control - even ban - smoking in the work place. (References available for these studies upon request)

#### SUMMARY

In summary, the evidence shows that involuntary smoking of smokers sidestream smoke poses a potentially serious public health problem and smokers and nonsmokers alike believe the right to designate a nonsmoking area exists.

The present amendment, HB445 provides for an equitable treatment of both smokers and nonsmokers. Those who choose not to smoke would not be forced to smoke. Those who do smoke would not have their right to smoke taken away but only restricted to designated areas and in turn provide for everyones right to a clean and healthy environment.

There is a problem concerning enforcement. How would the designation and enforcement of nonsmoking and smoking areas be carried out? Local health departments could relatively easily enforce the law in restaurants, but what about offices

## VISITORS' REGISTER

HOUSE HUMAN SERVICES

COMMITTEE

BILL HOUSE BILL 445

Date 2-11-83

SPONSOR REP. ELLERD

NAME	RESIDENCE	REPRESENTING	SUP- PORT	OP- POSE
B. J. Redman	P.O. Box 266 Lolo, MT 59847	Self		X
James T. Leonard	Helena, MT	Not related as yet	X	
Linda Stetten	Helena MT	Legislative intern (MHA)		
William Leary	Helena MT	Mont. Hosp Assoc.	X	
Donald P. Storti	Helena	DEPT. HEALTH & F.S.	X	
MAXINE HOMER	Helena	self	X	
Edward Ambrose	Helena	self	X	
Sylvia Anderson	Helena	self and friends	X	
Darryl Gundert	Helena	self	X	
Robert Olson	Helena	mt. Senior center	X	
Clare Cantrell	"	St. City/Co. Health Dept	X	
Margaret Millhouse	"	self	X	
Rolando Puert	Helena	MT Restaurant Assoc		✓
Eric Pratt	"	DHES	X	
S. Balaz	1620 Colson Field Helena	ALA of Montana	X	
Kathleen Smith	→ P.O. Box 413 Helena	Self & others	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

WITNESS STATEMENT

Name Irene Campbell Committee On Human Services  
Address 716 Harrison Date 2/11/83  
Representing St. Peter's Hospital Support ✓  
Bill No. 416 Oppose \_\_\_\_\_  
Amend \_\_\_\_\_

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. The respect and protect privacy of patient. News media also has a responsibility to report on matters of public record.
2. Hospitals had been guided by A.A.A. Code of Ethics and Code of Cooperation with Communications media. Allow very limited info on public record cases, without written consent, if name is released to press by law enforcement.
3. Accurate, non-detailed info is less upsetting to patient than information news media is forced to get from other sources. Getting timely written consent can be impractical and not of value if patient is deceased.
4. Have had no patient complaints in the past. Hospitals designated trained spokespersons.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

# VISITORS' REGISTER

HOUSE HUMAN SERVICES COMMITTEE

BILL HOUSE BILL 416

Date 2-11-83

SPONSOR REP. J. BROWN

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Testimony on HB 401 - An Act to revise Sec. 53-2-602, MCA, deleting that portion of the law which excludes casual, periodic, or occasional income in determining grant amounts for public assistance.

The portion of the law referred to in this bill was written in 1937 when the federal social security law was just two years old. I do not know why this section was put into state law but now, 46 years later, it is clearly contradictory to federal law. State law says we cannot count casual, periodic, or occasional income as income for purposes of figuring a welfare grant. There are four different federal programs which require us to count such income - but each requires it be counted differently. County general assistance, our 100% county program, is governed by state law but counties make their own regulations regarding eligibility using state guidelines.

We're in a "catch-22." If we follow federal law in counting income, we are sometimes in conflict with the state law. If someone appeals our decision, they have the state law to back them up. Likewise, if we follow state law, we are in conflict with federal law and theoretically ineligible to collect federal reimbursement. In either case, we are subject to having certain cases declared in error by our quality control unit. Each error, or mistake, can cost us dollars in federal reimbursement.

We have had some minor problems with this section already. That is why it was called to our attention. We request your support for this change so that we can carry out the laws consistently.

Judith H. Carlson  
Deputy Director, SRS  
February 11, 1983

## HB 312

HOUSE BILL 312 IS DESIGNED TO REDUCE PAPER WORK AT BOTH THE STATE AND COUNTY LEVELS. THIS BILL WILL ALLOW THE STATE TO PREPARE A LONG-RANGE, FOUR-YEAR PLAN THAT WILL BE UPDATED EVERY TWO YEARS. *Montana* UNDER THE CURRENT STATUTE, AN ANNUAL STATE ALCOHOL AND DRUG PLAN IS WRITTEN. I WOULD LIKE TO SEE DEVELOPED LONG-RANGE GOALS AND OBJECTIVES THAT CAN BE BOTH MONITORED AND MEASURED AS PART OF THE ALCOHOL AND DRUG EFFORT IN MONTANA.

COUNTIES ARE IN A SITUATION SIMILAR TO THE STATE IN THAT THEY ARE REQUIRED TO DEVELOP ANNUAL COUNTY PLANS AND SUBMIT THEM TO THE DEPARTMENT ANNUALLY FOR APPROVAL. COUNTIES HAVE REQUESTED, AND THE STATE AGREES, THAT FOUR-YEAR COMPREHENSIVE, LONG-TERM COUNTY ALCOHOL AND DRUG PLANS WILL BE OF MORE VALUE TO COUNTIES. THE ANNUAL PLAN UP-DATE AS PROPOSED IN MY BILL WILL BE NOTHING MORE THAN A NOTIFICATION OF COUNTY PRIORITIES FOR EXPENDITURE OF FUNDING. CURRENTLY, UNDER RULE MAKING AUTHORITY, THE DEPARTMENT HAS RULES PERTINENT TO THE SUBMISSION OF PLANS FOR UNIFORMITY. THE DEPARTMENT HAS INCORPORATED A STANDARD FILL-IN-THE-BLANKS FORM FOR USE BY COUNTIES IN DEVELOPING THE PLANS.

THE ONLY RULES THE DEPARTMENT WILL ADD IF MY BILL GOES THROUGH WILL CONCERN THE DATES OF SUBMISSION OF COUNTY PLANS, WHICH ARE NOW SET BY STATUTE IN PAGE 3 AND 4, LINES 23 THROUGH 25 AND 1 THROUGH 5.

# Statement of Intent

HB 312      The Department of Institutions is requesting legislation that would allow the state and counties to develop a comprehensive long term plan rather than the annual plans now required under 53-24-204 and 53-24-211.

Under Section 53-24-211, the Department has existing rule making authority regarding the submission, approval and disapproval of plans. The Department is requesting statute authority that would allow long term state and county comprehensive plans. The only new rules the Department will adopt under this bill will be dates for submission and updating county plans.

These existing rules that the Legislature has allowed are:

- (a) Submission dates for the county alcohol and drug plan.
- (b) The approval date by the department, or notice of disapproval.

Amendments to House Bill 328 (Introduced copy) Farris

1. Title, line 5.  
Following: "UNANNOUNCED"  
Strike: "INSPECTIONS OF"  
Insert: "INQUIRIES AT"
2. Page 2, lines 8 and 9.  
Strike: ",except long-term care facilities,"
3. Page 2, line 10.  
Following: "inspection."  
Strike: "The"  
Insert: "(5) In addition to and separate from the inspection required in subsection (4), the"
4. Page 2, line 11.  
Following: "unannounced"  
Strike: "inspection of"  
Insert: "inquiry at"
5. Page 2, line 12.  
Following: "facility"  
Insert: "The purpose of the inquiry is to ensure that a caring environment is maintained at each long-term care facility. The department shall adopt rules establishing criteria and a procedure for conducting the inquiry."  
Renumber: subsequent subsection



Statement of Intent  
House Bill 328

House Bill 328 requires a statement of intent because it requires the Department of Health and Environmental Sciences to conduct an annual unannounced inquiry at each licensed long-term care facility.

The Legislature contemplates that such inquiry should include, but not be limited to, the following:

1. Consideration of general resident care and treatment, including resident's personal hygiene and cleanliness.
2. Consideration of the living environment, including cleanliness of the premises.
3. Consideration of the residents' general well-being and morale.
4. Consideration of the facility's staff's morale.

Further, the process for conducting the inquiry should include, at a minimum, a survey of the residents by written instrument or personal interview, a survey of the facility's staff, a general tour of the facility, and other activity as may be reasonable.

Amendments to House Bill 284 (Introduced copy)

1. Title, line 5.  
Strike: "MANDATORY"  
Strike: "MASTERS OF"  
Following: "SOCIAL"  
Insert: "WORKERS"

2. Title, line 6.  
Following: line 6  
Strike: "WORK"  
Strike: "MASTERS OF"  
Following: "WORK"  
Insert: "EXAMINERS"

3. Title, line 9.  
Strike: "MASTERS OF"

4. Title, line 10.  
Strike: "WORK"

5. Page 1, line 14.  
Strike: "masters of"

6. Page 1, line 15.  
Following: "work"  
Insert: "examiners"  
Following: "board of"  
Strike: "masters of"

7. Page 1, line 16.  
Following: "work"  
Insert: "examiners"

8. Page 1, lines 22 and 23.  
Following: "the"  
Strike: "private practice of mental health"  
Insert: "medical or social welfare field"

9. Page 2, line 17.  
Following: "work as"  
Strike: "masters of"  
Insert: "licensed"  
Following: "masters of social"  
Strike: "work"  
Insert: "workers"

10. Page 2, line 20.  
Following: "work"  
Insert: "examiners"

11. Page 4, line 7.  
Strike: "attorneys"  
Insert: "attorney"

12. Page 4, line 9,  
Strike: "masters of"  
Following: "social"  
Strike: "work"  
Insert: "workers"

13. Page 4, line 23.  
Strike: "master of"  
Following: "social"  
Strike: "work"  
Insert: "worker"

14. Page 4, line 25.  
Strike: "master of"  
Following: "social"  
Strike: "work"  
Insert: "worker"  
Following: "letters"  
Strike: "LMSW"  
Insert: "LSW"

15. Page 5, line 5.  
Strike: "or"

16. Page 5, line 6.  
Following: "educators"  
Strike: the remainder of line 6 through line 9  
Insert: "or the general public engaged in social work like activities."

17. Page 5, line 15.  
Following: "an"  
Strike: "employee"  
Insert: "employer"

18. Page 5, line 16.  
Following: "establishment"  
Strike: "performed"  
Insert: "from performing social work like activities"

19. Page 7, lines 1 and 2.  
Strike: "of masters of social work"

20. Page 7, lines 3 and 4.  
Following: "in"  
Strike: "social work"  
Insert: "psychotherapy"

21. Page 9, line 8.  
Strike: "masters of"

22. Page 9, line 9.  
Strike: "work"  
Insert: "worker"

23. Page 9, line 11.  
Strike: "masters of"

24. Page 9, line 12.  
Strike: "work"  
Insert: "workers"

25. Page 12, line 11.  
Strike: "master of"

26. Page 12, line 12.  
Strike: "work"  
Insert: "worker"

27. Page 13, line 8.  
Following: "or"  
Strike: "master of"  
Following: "social"  
Strike: "work"  
Insert: "worker"

28. Page 14, line 9.  
Strike: "masters"

29. Page 14, line 10.  
Following: line 10  
Strike: "of"  
Following: "social"  
Strike: "work"  
Insert: "worker"

February 11,

19 83

MR. SPEAKER

NO, YOUR COMMITTEE ON HUMAN SERVICES, HAVING HAD UNDER CONSIDERATION HOUSE BILL NO. 284, FIRST READING COPY (WHITE). ATTACH THE FOLLOWING STATEMENT OF INTENT:

STATEMENT OF INTENT  
HOUSE BILL NO. 284

Section 4 requires the Board of Social Work Examiners to adopt rules setting professional, practice, and ethical standards for licensed social workers, establishing continuing education requirements, and adopting such other rules as are necessary for the regulation of licensed social workers. The Legislature perceives a need to regulate persons holding themselves out as having a master's degree in social work or using the title of master of social work. Consumers of social worker's services are entitled to adequate regulation of those services in the public interest. It is contemplated that the Board may promulgate rules that:

- (1) protect the public from abuse of the trust placed in social workers;
- (2) regulate the day-to-day practices of licensed social workers;
- (3) ensure a professional attitude and professional work in a professional atmosphere;
- (4) regulate fees charged for services;
- (5) regulate testing devices and methods used by licensed social workers;
- (6) regulate counseling techniques;
- (7) determine the type, amount, and quality of continuing education of licensed social workers; and
- (8) are otherwise necessary to the regulation of the profession.

Amendments to House Bill 269 (Introduced copy) Rep. Fabrega

Title, line 6.

Following: "FOR"

Insert: "PROGRAMS AND EMPLOYEE TRAINING FOR"

Page 1, line 24.

Following: "of"

Insert: "programs for and training for operators and employees of"

# STANDING COMMITTEE REPORT

February 16 19 83

MR. SPEAKER

We, your committee on HUMAN SERVICES

having had under consideration HOUSE Bill No. 312

first reading copy (~~white~~)  
Color

A BILL FOR AN ACT ENTITLED: "AN ACT GIVING THE DEPARTMENT OF INSTITUTIONS THE AUTHORITY TO PREPARE A COMPREHENSIVE LONG-TERM STATE CHEMICAL DEPENDENCY PLAN TO BE UPDATED EACH BIENNIIUM; REQUIRING COUNTIES TO PREPARE A COMPREHENSIVE LONG-TERM CHEMICAL DEPENDENCY PLAN EVERY 4 YEARS AND PROVIDE ANNUAL UPDATES; AND GIVING RULEMAKING AUTHORITY TO THE DEPARTMENT TO SET SUBMISSION DATES FOR COUNTY PLANS AND UPDATES; AMENDING SECTIONS 53-24-204 AND 53-24-211, MCA."

Respectfully report as follows: That HOUSE Bill No. 312

DO PASS

STATEMENT OF INTENT ATTACHED

February 16,

1983

MR. SPEAKER

WE, YOUR COMMITTEE ON HUMAN SERVICES, HAVING HAD UNDER CONSIDERATION HOUSE BILL NO. 312, FIRST READING COPY (WHITE), ATTACH THE FOLLOWING STATEMENT OF INTENT:

STATEMENT OF INTENT  
HOUSE BILL NO. 312

The Department of Institutions is requesting legislation that would allow the state and counties to develop a comprehensive long-term plan rather than the annual plans now required under 53-24-204 and 53-24-211.

Under Section 53-24-211, the Department has existing rule making authority regarding the submission, approval and disapproval of plans. The Department is requesting statute authority that would allow long term state and county comprehensive plans. The only new rules the Department will adopt under this bill will be dates for submission and updating county plans.

These existing rules that the Legislature has allowed are:

- (a) submission dates for the county alcohol and drug plan, and
- (b) the approval date by the department, or notice of disapproval.



# STANDING COMMITTEE REPORT

February 16, 1983

MR. **SPEAKER**

We, your committee on **HUMAN SERVICES**

having had under consideration **HOUSE** Bill No. **401**

**first** reading copy (**white** color)

**A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTION 53-2-602, MCA, TO DELETE THE PROVISION THAT EXCLUDES CASUAL, PERIODIC, OR OCCASIONAL INCOME IN DETERMINING GRANT AMOUNTS FOR PUBLIC ASSISTANCE."**

Respectfully report as follows: That **HOUSE** Bill No. **401**

**DO NOT PASS**

**NOTICE**

# STANDING COMMITTEE REPORT

February 16, 1983

MR. **SPEAKER**

We, your committee on **HUMAN SERVICES**

having had under consideration **HOUSE** Bill No. **416**

**first** reading copy ( **white** )  
color

**A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW RELEASE OF CERTAIN  
GENERAL INFORMATION PERTAINING TO A PATIENT'S INJURY TO THE NEWS  
MEDIA BY A HEALTH CARE FACILITY IF A LAW ENFORCEMENT AUTHORITY  
HAS REPORTED THE INJURY; AMENDING SECTION 50-16-311, MCA."**

Respectfully report as follows: That **HOUSE** Bill No. **416**  
**BE AMENDED AS FOLLOWS:**

1. Title, line 5.  
Following: "PATIENT'S"  
Strike: "INJURY"  
Insert: "CONDITION"

2. Page 3, line 5.  
Strike: "or general nature of the injuries"

**AND AS AMENDED**

**DO PASS**

# STANDING COMMITTEE REPORT

HOUSE BILL 445

Page 1 of 2

February 16, 1983

MR. SPEAKER

We, your committee on HUMAN SERVICES

having had under consideration HOUSE Bill No. 445

first reading copy ( white )  
color

A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE A NONSMOKING AREA TO BE DESIGNATED IN ALL ENCLOSED PUBLIC PLACES; REMOVING THE OPTION OF DESIGNATING THE ENTIRE AREA OF A PUBLIC PLACE AS A SMOKING AREA; AMENDING SECTION 50-40-104, MCA."

Respectfully report as follows: That HOUSE Bill No. 445

BE AMENDED AS FOLLOWS:

1. Page 1, line 16.  
Following: "designate"  
Insert: "the entire public area as a"  
Following: "nonsmoking"  
Strike: "areas"  
Insert: "area"

2. Page 1, line 19,  
Following: "designating"  
Strike: "a smoking"  
Insert: "the nonsmoking"

3. Page 2, line 6.  
Strike: "both a restaurant and"  
Following: "tavern"  
Strike: ", in which some"

XXXXXX  
DO PASS

February 16, 1983

4. Page 2, line 7.

Strike: "patrons choose to eat their meals in the tavern,"

5. Page 2, line 9 and 10.

Following: "area"

Strike: "in the tavern area of the establishment"

AND AS AMENDED  
DO PASS