

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT

Call to Order: By Rep. Bob Pavlovich, on February 16, 1989, at
8:00 a.m.

ROLL CALL

Members Present: All

Members Excused: None

Members Absent: None

Staff Present: Paul Verdon and Sue Pennington

Announcements/Discussion: None

HEARING ON HOUSE BILL 696

Presentation and Opening Statement by Sponsor:

Rep. Menahan stated that this bill will grant a political candidate the right to reply to a newspaper editorial that assails or opposes the candidate; and provides a penalty for failure to comply.

Testifying Proponents and Who They Represent:

None

Proponent Testimony:

None

Testifying Opponents and Who They Represent:

Chuck Walk, Montana Newspaper Assoc., Helena
Dan Black, Daily Inter Lake, Kalispell
Mike Voeller, Lee Enterprises, Inc.
Jim Crane, Publisher of the Independent Record, Helena

Opponent Testimony:

See exhibit 1 for Mr. Walk's written testimony.

See exhibit 2 for Mr. Black's written testimony.

See exhibit 3 for Mr. Voeller's written testimony.

See exhibit 4 for Mr. Crane's written testimony.

Questions From Committee Members: Rep. Bachini asked Mr. Walk if you would not call this a fairness bill in a way? Mr. Walk didn't believe so. Rep. Bachini asked why the paper could not interview a number of candidates and let the people really decide instead of the press, as stated before, does carry a lot of power. We know this. The press can elect or the press can defeat. We have seen this done. What I am trying to get at is the fairness of it. You have at your disposal, unlimited resources to do what you want for one particular candidate. I look at it as a fairness issue here. Instead of endorsing one particular candidate. Interview the candidates, bring out the facts in your interview and let the people decide. Then you would not have this problem. Mr. Walk said he thinks many papers do just exactly that. They do the interview process with the candidates for the editorial, but they also provide most candidates, in most newspapers, with a question and answer dialogue throughout the campaign in which they try to arrive at positions of the candidates, so they can provide a mirror of the community for the electors. Another problem you touched on, Rep. Bachini, is the feeling. There are unlimited resources out there. Some of the state's larger papers certainly have plenty of resources. On the other hand, some of the smaller, weekly or daily papers simply do not have the resources to accomplish what you would like to see and what most of them would like to see. Rep. Bachini stated that there have been a couple of candidates running and the paper has taken a stand with one candidate and given him front page coverage and the other candidate is back on page 6 in a little article, I am looking at the question of fairness. I think the newspapers should not take an editorial stand on the candidates, let the people endorse the candidate. Mr. Walk said many newspapers do not feel that they are qualified to endorse a candidate, so they simply don't.

Rep. Blotkamp asked Mr. Walk if the paper does endorse a candidate, why they can't allow a counter opinion on the other candidate? Mr. Walk said that to the best of his knowledge, I can't speak for all newspapers, from an association standpoint, I don't know of a newspaper that would not give a candidate the opportunity to respond, either in a letter to the editor which appears on the editorial page or in some kind of a news story. Particularly if the endorsement editorial was close to the election date. I simply can't in good judgment believe that one of those large newspapers would not let somebody have a response to an editorial in their paper.

Rep. Blotkamp asked Mr. Voeller about newspapers endorsing one candidate in an editorial and cutting down the other candidate in the same editorial. Mr. Voeller said some papers will take a swipe at the person they are not

endorsing. Rep. Blotkamp thought the newspapers should let the candidate know when an editorial is going to be published and the candidate could have his answer to the editorial published along with the editorial.

Closing by Sponsor: Rep. Whalen said there is a problem. Mr. Voeller said his newspaper allows the candidate the right to respond, if they allow the candidate this right, they should not object to this bill. All this bill does is take away the absolute discretion that the news media has right now to decide whether or not an individual has the right to respond. It ensures that the response is right there with the initial statement made about the unendorsed candidate.

HEARING ON HOUSE BILLS 437 & 438

Presentation and Opening Statement by Sponsor:

Rep. Gould, House District 61, Missoula. He explained why he introduced these bills at the request of podiatrists. He has been a diabetic for 40 years, the incidence of diabetics who lose their feet is astronomical. So, foot health is tremendously important to these people and to myself. I think, that after being a diabetic for 40 years, that I am able to stand here on my own two feet is quite important. The one thing you have to keep in mind, and that is very important, is that there are over 40,000 diabetics in the state of Montana.

Testifying Proponents and Who They Represent:

Rick Tucker, Montana Podiatrist Association
Dr. Loren Rogers, Missoula
Dr. James Clough, Great Falls
Mona Jamison, MT Chapter Physical Therapists Assoc., Helena
Dr. Charles Jennings, Great Falls
Dr. Cleveland Smith, Helena
Dr. David Huebner, Great Falls
Dr. Scott DeMars, Billings
Dr. Mathias Fettig, Billings
Jerry Loendorf, MT Medical Association
Jim Ahrens, President, MT Hospital Assoc., Helena

Proponent Testimony:

See exhibit 1 and 2 for Dr. Rogers's testimony to HB 437 and 438.

See exhibit 4 for Dr. Clough's written testimony to HB 437.

See exhibit 3 for Dr. Jennings's written testimony to both bills.

See exhibit 5 for Dr. Smith's testimony to both bills.

See exhibit 6 for Dr. Huebner's written testimony to HB 437.

See exhibit 7 for Dr. DeMars's written testimony to HB 437.

See exhibit 8 for Dr. Fettig's written testimony to HB 437.

See exhibit 1, 2, and 3 for Dr. Rogers's testimony to HB 438.

See exhibit 4 for Dr. Clough's written testimony to HB 438

See exhibit 5 for Dr. Fettig's written testimony to HB 438.

See exhibit 6 for Dr. DeMars's written testimony to HB 438.

See exhibit 7 for Dr. Huebner's written testimony to HB 438.

Ms. Jamison stated that the physical therapists want to go on record in support of HB 437.

Mr. Loendorf stated that in regard to the amendment mentioned by Rep. Gould, we support that amendment and the bills.

Mr Ahrens stated that his association supports the amendment to HB 438. This makes it a much better bill.

Testifying Opponents and Who They Represent:

None

Opponent Testimony:

None

Questions From Committee Members: None

Closing by Sponsor: Rep. Gould said on behalf of himself and the other 40,000 diabetics I ask your favorable vote for these bills.

DISPOSITION OF HOUSE BILL 437

Motion: Rep. Bachini moved DO PASS.

Amendments, Discussion, and Votes: None

Recommendation and Vote: HB 437 DO PASS unanimously.

DISPOSITION OF HOUSE BILL 438

Motion: Rep. Thomas moved DO PASS. Rep. Bachini moved the amendment.

Amendments, Discussion, and Votes: The amendment DO PASS.

Recommendation and Vote: HB 438 DO PASS as amended.

HEARING ON HOUSE BILL 617

Presentation and Opening Statement by Sponsor:

Rep. Kadas stated that this bill would amend the banking laws by creating a community reinvestment rating system on which to base a bank's eligibility for state-funded programs and for authorization to relocate, merge, consolidate, or expand; to place a representative of a low-income organization on the state banking board; amends Sections 2-15-1803; 32-1-102, 32-1-109, 32-1-202, and 32-1-213, MCA; and provides effective dates.

Testifying Proponents and Who They Represent:

Rock Ringling, MAPP
Lynn Robson
Nancy Griffin
Chet Kinsey, Helena
Richard Parks, Northern Plains Resource Council
Virginia Jellison, MT Low Income Coalition
Joe Moore, MT Rainbow Coalition

Proponent Testimony:

See exhibit 1 for Mr. Ringling's written testimony.

See exhibit 2 for Ms. Robson's written testimony

See exhibit 3 for Ms. Griffin's written testimony.

See exhibit 4 for Ms. Teague's written testimony.

Mr. Parks said they had a reputation in some areas as being anti-business. The fact of the matter is, we are pro business but pro real business, business out in the street. We think this is a pro business bill and we support it and ask for a do pass recommendation.

Testifying Opponents and Who They Represent:

Marlene Teague

Bob Pyfer, MT Credit Unions
Jim Hanson, Malta
Chip Erdman, MT Saving & Lending Institutions
Roger Tippy, Independent Bankers

Opponent Testimony:

See exhibit 4 for Ms. Teague's written testimony.

Mr. Hanson owns a small bank and stated that he doesn't understand why we need duplicating laws. We make our money investing in loans, profitable loans. Banks buy and sell money, the best is to sell it in good loans.

Mr. Erdman stated that the members of his association are subject to the federal community reinvestment act. This is just duplication of that act.

Mr. Tippy said if this bill were limited to filing this additional CRA before you could do a merger and consolidation under HB 151 we might like it better.

Questions From Committee Members: None

Closing by Sponsor: Rep. Kadas thought the main problems had been missed. There are only 2 communities where the kind of detail that CRA reporting that we need for communities exist, Billings and Great Falls. Those are the only 2 counties that are big enough that report the kind of detail that we need.

HEARING ON HOUSE BILL 627

Presentation and Opening Statement by Sponsor:

Rep. Simon, House District 91, Billings. I am presenting to you today HB 627, this bill is designed to privatize the retail liquor operations from the state of Montana. I believe the time has come for action on this bill. I believe the state will be better with a private system than the current system that we have. I am not suggesting that our state liquor store employees aren't doing a good job because I believe that our liquor store employees are doing a good job. They are working hard and they are good people. The problem is the system is flawed. Since 1975 the profit line has steadily gone down hill and I mean dramatically so. The system is flawed, when I say this I mean we have a system that is based on a monopoly where the state is the sole provider of liquor for the people of Montana. When the employees of the store are only allowed to sell one product it becomes increasingly difficult to deal with declining sales. We have had declining sales in the state of Montana for a number of years and there are a number of reasons for

them. None of them can be related to the employees of the stores. Since 1975 we have seen a major change in the system. This bill appears to be a major change, but I think it is evolutionary in the change that is already going on. We had approximately 150 state owned stores, today we have only 40. A number of the stores are agency stores. This is a major change. Almost 75 percent of the stores in the state of Montana that were state owned are now a quasiprivate operation. We are not talking about a change that is dramatic and sudden at this point of time, we are talking about a change that has been going on for a long time. Why has this change been going on? To try and preserve the revenue base, and that is what this bill is all about. To try and preserve the revenue base that we have. An agency store is a store that is operated by an agent for the state of Montana, he pays all of the employees, he pays all of the operating expenses, and he gets a commission. Some of those commissions are less than 8 percent on the sale of the states inventory. On page 1 of the bill you will find that we are calling for a package store license. The idea of the package store license is to license stores that sell liquor for off premise consumption only. Stores that we have right now sell their product for off premise consumption only, that is different than a bar. A bar sells package goods but they also sell by the drink. This is to set up a license for off premise consumption only. Secondly, on page 24 we are talking about a different taxing structure. Currently the state uses a markup system where they take cost and add 40 percent to the cost of those goods. After we add this cost plus 40 percent we have two different taxes, one is a 10 percent license fee and those revenues are designated for specific purposes. They are for drug and alcohol programs and go to the department of institutions and law enforcement and so on. We have a 26 percent tax that goes to the general fund, that is called an excise tax. Those are the two taxes we currently have, we get down to the final price. What I propose to do and the change I am proposing in the taxing system is to start out with our cost, then to use a different tax structure. That tax structure would be a license tax of 75 cents per liter, based on volume, not on price. The idea of the 75 cents is to try, as closely as possible, make these two factors equal. The 10 percent we are currently getting now, the revenues we derive, and the 75 cents that we derive off the per liter price is designed to generate the same revenues. Those are generally earmarked revenues and we do not want to adversely affect the programs that are being supported by this license tax. The bill also proposes to have \$1.80 tax per liter on the product which would be the excise tax. That \$1.80 is considerable more and will generate more revenue than the 20 percent tax. The reason for this is that the third component that goes into our state coffers is the profits that is generated by the liquor system. The net effect will be that we will stabilize the amount of revenue that is coming into the general fund. This bill will not

reduce the amount of revenue generated to the general fund. That is the whole purpose of this bill, to try and stabilize it. We have cutback several times and today we have a little over 100 employees working in our state liquor stores. That is less than 3 FTEs for every state liquor store in the state of Montana. We can't cut this any further. So, as sales decline, say 2 percent, we are finding that the profits are declining 8 percent. And goes on year after year. With our state liquor store system we are limited to selling one product, liquor, we can't add products like the bars have done. That is the fatal flaw we have in the system. When you can only sell one product and those sales are declining, you can only cut so far and then you start cutting into service. Under this bill taverns would be able to buy directly from the state warehouse at the same price as a package store licensee would be able to buy from that state warehouse. In many cases, I think those bars will become package stores also. They will provide that service to the people. Especially in small communities that is going to be important. It is difficult to maintain a store that sells just liquor in a very small community. You need other things to go along with it. This would allow people to start a package store and make that store available to the public. They are not going to be limited to the products that they can sell only liquor. They can offer other things, like a variety of things that would tie in with liquor, ice, mix, and all kinds of things like that. Just selling liquor is the chief problem we have had with the state. There is another alternative, I don't think anybody on this committee would suggest we do this, and start letting our state liquor stores offer other products. Go into competition with the private sector. I don't think that is a good alternative. We have a structural problem, it is not the fault of any one, that is just the way it is. It is time for a change. I have some amendments to the bill.

Testifying Proponents and Who They Represent:

Phil Strobe, MT Tavern Assoc.
Wayne Phillips, Governor's Office
Charles Brooks, Executive President, Retail Stores Assoc.
Don Ingels, MT Chamber of Commerce

Proponent Testimony:

Mr. Strobe said the amendments mentioned by Rep. Simon change the bill significantly. The principles we are laying down in this bill as amended is in the best interest of the state of Montana and to those of us who are part of the system. The tavern owners have a business that is completely controlled. We can buy our product from one source, we can sell it at one price, we can only sell it to certain people, we can sell it at only certain hours, we now have to put signs explaining to the public that this may be

a dangerous substance. We have all these things that the other members of the mainstream business community do not have. For that reason, we are tied very closely to what you do as legislators in setting the policies of this state on how this liquor will be distributed in the state of Montana and made available to the public. What we had in Montana until the last 8-10 years was really a three-tiered system. The state of Montana bought the liquor from the distillers, took into the state warehouse, repackaged that and sent it out, as Rep. Simon said, to a high at one time of 150 stores. From those state stores an individual citizen or a licensee such as a bar could buy the product. That is the market that we still have in place today. It is apparent that the system is losing the ability to produce a profit. At one time liquor was the third highest source of revenue to the general fund. That is not true today.

Mr. Phillips stated that the governor has strongly advocated privatization. We do not have the authority now to do any of this. The statutes that are laid out in this bill have to be changed so the bill is necessary in that sense. Support has been growing, not only among legislators, but around the state of Montana.

Mr. Brooks stated that his association supports the concept that local, state, and federal government should not be involved in those merchandising and commercial activities that properly belong in the private sector. State government should allow free enterprise to handle the functions of retail liquor business in the state of Montana. We urge your support of this bill.

Mr. Ingels stated that the Montana chamber of commerce supports this bill.

Testifying Opponents and Who They Represent:

Sen. Richard Manning
Rep. Jerry Driscoll
Bob Heiser, UFCW
Jim Murry, AFL-CIO
Tom Crane, UFCW, Great Falls
Dave Crosmer, UFCW, Billings
Patty Scott
Mary Schuller, State Employee
Bob Lemm, Alpha Industries
Rep. Bob Bachini

Opponent Testimony:

Sen. Manning manages one of the state liquor stores in Great Falls. I am upset with the idea of 100-120 people out there that will not have a job. There is nothing in this bill for those people. I wonder what the consensus is of the governor and the sponsor of the bill. I know Governor

Stephens has feeling for the people, but it is not showing in this bill. I have a real problem with this. A lot of the people have a few years before they reach 60 or 65, I have a little better than 2 years to reach 65 and I would go out and work in another craft. But there aren't any jobs, remember that, people. You are throwing 100 or more people out of work, they are going to have to draw unemployment and that will cost the state of Montana. Think about this. Put this bill to rest.

Rep. Driscoll does not support this bill. In the bill we will have one warehouse in the state with no minimum purchase price. Changing the tax from a percentage to a dollar amount is a great idea if you drink Bombay, Tangiray, or Blackjack. But if you drink black velvet or schnapps, schnapps sells for about \$5 per bottle in stores right now. Under this bill the tax would be \$2.55. Bombay sells for about \$18, the tax would be \$2.55. So if you are drinking gin or expensive scotch, it could be a money saver for you. But, if you are schnapps drinker your price will go up even with the 40 percent off, it will go up. Who would buy one of these stores from the state? The bars can buy directly from the warehouse.

Mr. Heiser opposes this bill, see exhibit 1 and 2.

Mr. Murry submitted written testimony, see exhibit 3.

Mr. Crane opposes this bill. In the last 10 years liquor store operations have generated 52 million dollars. That money will no longer be available to the general fund. There is nothing in this bill that provides for anything to make up for that level of lost revenues.

Mr. Crosmer stated that he is here to oppose HB 627. He feels that as committee members if you are in favor of the present DUI laws or tougher DUI laws and you say you support Rep. Simon's bill to privatize the liquor division then you are talking out of both sides of your mouths. The citizens of Montana want control over the liquor, state control over the liquor, so that it is sold responsibly. So it is not being advertised as the best thing since oat bran, in the newspapers, t.v., etc. The state currently does not advertise and I think that in every state that has privatized consumption has gone up in those states. See exhibit 4 for the rest of Mr. Crosmer's testimony.

Ms. Scott said she was opposed to HB 627. As a small business it is not a feasible business to get into. By the time you purchase the inventory, the insurances, the loss of the bar business and with the chance of grocery stores getting into it, it would not be a good long-range investment to go into. We feel that the transition period we are going through right now, taking all those stores not earning 10 percent and turning them to agencies is the way

to go and the way to stay at this point. We are in favor of a full agency system at some point.

Ms. Schuller stated that she operates a state liquor store in Livingston. I find it hard to believe that we are talking about 100 jobs that will be done away with in a state that can ill afford to lose people. We are standing a chance of losing representation in the state of Montana, yet we keep saying we don't need these jobs, let's do away with them. Please turn down this bill, as we have asked previously. I have worked thirteen years and this bill has come more times than I can remember. I urge you to vote no.

Mr. Bob Lemm stated that at the present time there is a new formed corporation called Montana Distillers which will be opening a plant and will be bottling in Montana. Therefore, we are requesting that paragraphs 6 through 17 of this bill remain intact as it is.

Rep. Bachini stated that he wants to go on record as an opponent.

Questions From Committee Members: Rep. Glaser asked Rep. Simon what he planned to do with the 100 plus people? Rep. Simon said he would be happy to entertain any suggestions the committee or others might have that we will do what we can to mitigate the impact on employees. We have laid off many, many state liquor store employees already without any mitigating legislation. I am happy to try and work out something to mitigate the affects on the employees if people have suggestions. I simply don't know how to work it into this bill to do that. I hope before any action is taken on this bill that you and the governor's people address that problem. There are people that have worked for us for 20 years or more and have been faithful employees, we owe them. We just can't cut them out.

Rep. Bachini asked Mr. Blewett if I heard Rep. Simon in his opening statement right, there will be no freight cost involved in this program? Is that correct? Mr. Blewett said there will be equalized freight. There will be an increase in freight if the number of shipments increases because the weight we ship will reduce. There would be some offset that way.

Rep. Hansen asked Rep. Simon if it was not a little bit irresponsible to propose a bill like this that does away with 4 million dollars? Where is your fiscal note on the bill? Rep. Simon said the fiscal note was ordered but is not available at this time. He does not think it is irresponsible. It will generate the same amount of revenue. Rep. Simon said when the fiscal note comes up he expects it to be revenue neutral.

Rep. McCormick asked Rep. Simon it may be neutral but


who is going to pay that? The consumer, right? He is going to pay more to make it revenue neutral.

Rep. Bachini asked Rep. Simon if he did not say that this would create jobs? Are we going to create jobs at the same level of pay or create jobs at lower pay? Are the new jobs going to provide the same benefits? Rep. Simon said he did not know the answer because he has no way of knowing who might form the new businesses in the state of Montana.

Closing by Sponsor: Rep. Simon said that one thing that had not been mentioned that is in the bill it would get the state of Montana out of the wine business entirely. Last year the sale of wine was 1.5 million dollars, \$57,000 was in the state liquor stores. The amount of wine business being done in our liquor stores is so small that it doesn't make sense for the state to continue. This bill calls for the state to stop being in the table wine business and to allow that to be done through private distributors. The talk about losing 4 million dollars is not true. This bill is designed to replace those revenues with the tax proposal I have explained to you. When we sell those stores out there you have to keep in mind that they will not have to pay that \$15,000 license fee. That will be granted automatically along with the sale of the inventory to them. They will place a bid and that extra \$15,000 that we are talking about is only on new stores that would be formed under this bill after 1992. There is no question that it costs money to go into business.

ADJOURNMENT

Adjournment At: 11:25 a.m.


REP. BOB PAVLOVICH, Chairman

BP/sp

4003.min

DAILY ROLL CALL
BUSINESS & ECONOMIC DEVELOPMENT COMMITTEE

51th LEGISLATIVE SESSION -- 1989

Date 2 16 89

NAME	PRESENT	ABSENT	EXCUSED
PAVLOVICH, BOB	✓		
DeMARS, GENE	✓		
BACHINI, BOB	✓		
BLOTKAMP, ROB	✓		
HANSEN, STELLA JEAN	✓		
JOHNSON, JOHN	✓		
KILPATRICK, TOM	✓		
McCORMICK, LLOYD "MAC"	✓		
STEPPLER, DON	✓		
GLASER, BILL	✓		
KELLER, VERNON	✓		
NELSON, THOMAS	✓		
SIMON, BRUCE	✓		
SMITH, CLYDE	✓		
THOMAS, FRED	✓		
WALLIN, NORM	✓		
PAUL VERDON	✓		

ROLL CALL VOTE

BUSINESS AND ECONOMIC DEVELOPMENT

COMMITTEE

DATE

2/16/89

BILL NO.

437

NUMBER

NAME

AYE

NAY

Bob Pavlovich

Bob Bachini

Rob Blotkamp

Gene DeMars

Bill Glaser

Stella Hansen

John Johnson

Vernon Keller

Tom Kilpatrick

Lloyd McCormick

Thomas Nelson

Bruce Simon

Clyde Smith

Don Steppler

Fred Thomas

Norm Wallin

TALLY

18

Sue Pennington

Secretary

Bob Pavlovich

Chairman

MOTION:

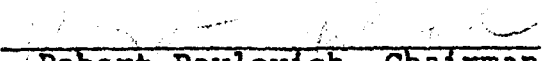
Bachini - yes

STANDING COMMITTEE REPORT

February 16, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Business and Economic Development report that House Bill 437 (first reading copy -- white) do pass .

Signed: 

Robert Pavlovich, Chairman

ROLL CALL VOTE

BUSINESS AND ECONOMIC DEVELOPMENT

COMMITTEE

DATE 2/16/89 BILL NO. 438 NUMBER

NAME	AYE	NAY
Bob Pavlovich		
Bob Bachini		
Rob Blotkamp		
Gene DeMars		
Bill Glaser		
Stella Hansen		
John Johnson		
Vernon Keller		
Tom Kilpatrick		
Lloyd McCormick		
Thomas Nelson		
Bruce Simon		
Clyde Smith		
Don Steppler		
Fred Thomas		
Norm Wallin		

TALLY

16

Sue Pennington
Secretary

Bob Pavlovich
Chairman

MOTION: Thomas Bachini w - 10 mins
w - 4 p

STANDING COMMITTEE REPORT

February 16, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Business and Economic Development report that House Bill 438 (first reading copy -- white) do pass as amended.

Signed: 
Robert Pavlovich, Chairman

And, that such amendments read:

1. Page 2, line 2.

Following: line 1

Insert: "(4) This section does not preclude a hospital from limiting membership or privileges based on education, training, or other relevant criteria."

Amendments to House Bill No. 438
First Reading Copy

For the Committee on Business and Economic Development

Prepared by Paul Verdon
February 16, 1989

1. Page 2, line 2.

Following: line 1

Insert: "(4) This section does not preclude a hospital from
limiting membership or privileges based on education,
training, or other relevant criteria."



NATIONAL NEWSPAPER ASSOCIATION

January 11, 1989

Chuck Walk
Montana Newspaper Association
1900 Main Suite C
Helena, Mt 59601

HB 696

Dear Mr. Walk :

I appreciate very much your letting the National Newspaper Association know that the state of Montana is considering the enactment of a newspaper right of reply statute, and for requesting our reaction to this development.

In a way I am somewhat surprised that an informed state legislator would seriously consider such a bill for enactment since it is about as clear as anything ever gets in the law that enactment of such a law would be unconstitutional. I can say that with some certainty for the U.S. Supreme Court ruled directly on this issue in Miami Herald Publishing Co. v. Tornillo, 418 U.S. 241 (1974), and a number of legal treatises have addressed the issue.

For instance, Nowak, Rotunda & Young say:

The Supreme Court however has strongly rejected the notion that a government guaranteed right of access or a fairness doctrine can apply to the press. . . . Miami Herald firmly established that the right of newspaper editors to choose what they wish to print or not to print cannot be abridged to allow the public access to the newspaper media. The "virtually insurmountable barrier" which freedom of the press erects between governmental regulation and the print media stands firm.

Along much the same lines, Laurence Tribe, Professor of Constitutional Law at Harvard says in his AMERICAN CONSTITUTIONAL LAW:

The Court reasoned both in Miami Herald v. Tornillo and in Wooley v. Maynard that the power to compel speech comes too close to the power to censor speech: both must

¹NOWAK, ROTUNDA & YOUNG, CONSTITUTIONAL LAW (3d ed. 1986) at section 16.18 (No Right of Access to Newspapers).

Although the Miami Herald case was decided 15 years ago, the Court has reaffirmed it many times, and it is considered on of the bedrocks of First Amendment Law.

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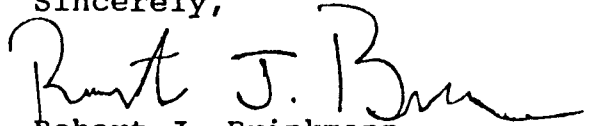
be forbidden. Indeed, entrusting government with power to assure media access entails at least three dangers: the danger of deterring those items of coverage that will trigger duties of affording access at the media's expense; the danger of inviting manipulation of the media by whichever bureaucrats are entrusted to assure access; and the danger of escalating from access regulation to much more dubious exercises of governmental control.²

The Miami Herald case involved a Florida statute which required newspapers to publish replies by political candidates if the candidate had been criticized in the newspaper. In its decision, written by Chief Justice Burger, the Supreme Court threw the Florida statute out as violating the First Amendment. In doing so, the Court through Chief Justice Burger said that the implementation of a right of access through some enforceable government mechanism "at once brings about a confrontation with the express provisions of the First Amendment." This was because the Florida statute acted to "exact a penalty on the basis of the content of the newspaper."

In a concurring opinion which has now become famous in the lexicon of our legal system, Justice White wrote that the Florida law violated the "elementary First Amendment proposition that government may not force a newspaper to print copy which, in its journalistic discretion, it chooses to leave on the newsroom floor," and noted that suppression "of the right of the press to praise or criticize governmental agents and to clamor and contend for or against change...muzzles one of the very agencies the Framers of our Constitution thoughtfully and deliberately selected to improve our society and keep it free."

I hope this clarifies matters. If you or anyone in Montana need further assistance, or would like to discuss this in more detail, please give me a call.

Sincerely,


Robert J. Brinkmann
General Counsel

²TRIBE, AMERICAN CONSTITUTIONAL LAW 1002 (2d ed. 1988).

#2
2/16/82
HB 691

Opinion

Rep. White Knight riding wrong horse

Maybe Montana should have a literacy test for lawmakers so the state won't have to endure biennial assaults on the First Amendment.

Just kidding, of course: It's tough enough to find good candidates as it is.

But as a minimum, couldn't we require everyone who files for the Legislature to read the Constitution so we won't elect bozos who think election to the statehouse is a license to stifle free speech?

Take this guy in Billings, Rep. Timothy Whalen, who served one term in the House and recently ran for another: He's ticked off because the Billings Gazette endorsed the other fellow, Whalen's opponent, in the last election.

Whalen got elected anyway (take THAT, Gazette), and now he's got this great idea to force newspapers who endorse one candidate to print rebuttals from the other one at the same time.

Nothing personal, of course. He told The Associated Press, "It's just a correction of what I see as an abuse."

Aha, the White Knight rationale: Correct an abuse.

Here we have Timothy Whalen, champion of maltreated politicians in general and those living at his address in particular, doing battle with haughty and abusive editorial writers.

Most likely the idea came to him in a dream. You know, one of the Founding Fathers — Thomas Jefferson, probably — sitting there in a marble lounge chair, enveloped in a rosy kind of glow, looking stern and calling, "Timothy.... Timothy? Are you listening, Tim?"

"We've been reading the newspapers here, and darned if doesn't seem that we went too far when we set up this free speech and free press business. Where did those hacks at the newspaper get the idea we wanted them to print anything but a farmer's almanac? You, Tim, you're the choice up here to correct our blunder and stop this abuse...."

Now, you can't for a minute doubt Whalen's motives, can you? The first time he ran for the House, the Gazette endorsed him and abused the other guy, as it were. But the injustice of it all didn't occur to Whalen until two years later when the Gazette, recognizing it had erred previously, endorsed Whalen's opponent this time around.

Poof, an alarm wakes Whalen and tells him it's time to legislate, and he spurs his white horse toward Helena, carrying his dream for a better, happier world, a world in which editorial writers have to clear their opinions with Tim Whalen five days before press time.

If he had been honest with himself and the long-suffering people of Montana, however, Whalen would have openly asked the Legislative Council to draft a bill to restrain the Gazette from endorsing any candidate who campaigns against Tim Whalen. That would accomplish what he really truly wants.

But it would also reveal his righteous cause for what it is — just so much sanctimonious sniveling — and if people really think for a minute about who is abusing what, they will laugh Tim Whalen and his bogus little bill right out of the Legislature.

#3
2/16/89
HB696

TESTIMONY ON HOUSE BILL 696 BEFORE THE HOUSE BUSINESS COMMITTEE
FEB. 16, 1989, BY MIKE VOELLER, LOBBYIST FOR LEE ENTERPRISES, INC.

Mr. Chairman, members of the committee, for the record by name is Mike Voeller. I am the registered lobbyist for Lee Enterprises, Inc., which owns four daily newspapers in Montana.

Yesterday I gave many of the members of this committee a letter written by Robert Brinkmann, general counsel for the National Newspaper Association in Washington, D.C.

HB696 clearly is unconstitutional and that fact is supported by Mr. Brinkmann, who cites a case involving the Miami Herald that was decided by the United States Supreme Court. In that case Justice White wrote that the Florida law violated the "elementary First Amendment proposition that government may not force a newspaper to print copy which, in its journalistic discretion, it chooses to leave on the newsroom floor."

I ask that a copy of Mr. Brinkmann's letter be made a part of the official record.

The "WHEREAS" sections of HB696 ascribe a power to the press that I think is more perception than reality. I base this statement on more than 30 years in the newspaper business, most of which has been in Montana.

I recall an instance a number of years ago when the Independent Record endorsed six candidates for the House. Four of the six were defeated. The IR did not endorse Rep. Jim Rice, a co-signer of HB696, who survived the ordeal.

In 1986 The Billings Gazette, endorsed Rep. Tim Whalen, chief sponsor of HB696. He was elected to his first term in the Montana House. In 1988, The Billings Gazette did not endorse Rep. Tim Whalen, who was re-elected to his second term in the House.

A certain U.S. Senator told the publisher of The Gazette that he would give him \$100 NOT to endorse him.

Perception and reality aren't always the same.

I urge you to recommend that HB696 "do not pass."

#4 2/16/89
HB 696

Helena

INDEPENDENT RECORD



317 Cruse Avenue

P.O. Box 4249

Helena, Montana 59604

(406) 442-7190

February 15, 1989

House Business and Economic Development Committee
Rep. Bob Pavlovich, Chairman

Ladies and Gentlemen:

My name is Jim Crane. I'm publisher of the Helena Independent Record.

I'm here today to express opposition to House Bill 696. Although I am publisher of the local newspaper, I have spent most of my adult life as a reporter, copy editor, editorial writer and general news flunkie.

The bill you are considering is unconstitutional. I think we can agree on that.

But besides that, it's no fun.

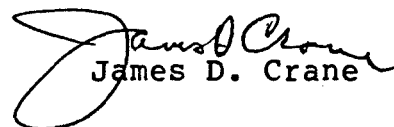
Half of the attraction of politics to your constituents is the give and take, the contests, the opportunity to nag at you about your performance, your promises, even your haircut.

And that's partly what endorsements do -- stimulate conversation by voters about the candidates. As I'm sure others have pointed out, endorsement by this newspaper or any other newspaper certainly doesn't guarantee election. Rep. Jim Rice's presence in this assembly is certainly evidence of that.

In conclusion, this is not a bill to take seriously. While it may be fun to tease us ink-stained wretches, I don't think this committee wants to put its stamp of approval on a bill which is, first of all, silly, and, finally, blatantly unconstitutional.

Kill 696 and be done with it.

Thank you.


James D. Crane

Amend House Bill No. 438 as follows:

1. Page 2, at the end of line 1.

Insert: "However, this section shall not preclude a hospital from limiting membership or privileges based on education, training or other relevant criteria.

(This sheet to be used by those testifying on a bill.)

NAME: Dr. LOREN L. ROGERS DATE: FEB 14/87

ADDRESS: 218 E. FRONT, MS2A Mt. 59801

PHONE: H. 728 7253, OF. 542-2108

REPRESENTING WHOM? Nant. Podiatric Med. Assoc.

APPEARING ON WHICH PROPOSAL: HB 437, Podiatry Practice

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

COMMENT: See Attached

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

#1
NB's 437
438
2/16/84
"AN ACT REVISING THE LAWS GOVERNING THE PRACTICE OF PODIATRY, DEFINING THE SCOPE
OF PODIATRY PRACTICE; AND AMENDING SECTIONS 37-6-101 AND 37-6-102, MCA."

1. Revise the language to meet the current practice and education levels of present and future podiatrists.
2. Clarify the 'scope of practice' and the definition of the 'functional foot'.
3. To allow the full scope of practice relating to the continued educational improvements, and understanding of the functional foot.
4. To insure the public the delivery of 'all inclusive' foot care, by the most intensively trained in the specialty of foot care.

1. This revised language is continually in need of updating due to the astounding rate at which medical advancements are being made. When the initial practice act was written, much of the medical technology and diagnostic tools used by today's practicing podiatrists had yet to be developed. Our profession is continually up-grading its' educational base both at the graduate and post-graduate level, and will certainly continue to do so well into the future. To require modern podiatric physicians and surgeons to practice within the letters of educationally out-dated laws is limiting to the publics well-being.

While it may be argued that a revision of the existing law will allow an extreme expansion in the boundries of the body in which a podiatrist may practice, it MUST be pointed out that the 'functional human foot' is not an isolated entity in and of, itself. It is a complex functional unit of extreme intricacy that has as many, or more, muscles originating in the lower leg (below the knee) as it does within the foot itself. (NOTE: Chart on blue page)

Some may argue that with the revised law, podiatrists may be tempted to perform vascular, nerve, or other highly skilled procedures in the lower leg. While conceivably this is true, our present system dictates that a physician and surgeon of any specialty must undergo training, credentialling, proctoring, and the on-going process of peer-review in any hospital setting.

Another argument that may arise is that podiatric practitioners may perform some of the beforementioned procedures in his (or her) own office. We would suggest that this line of reasoning is totally without merit. Due in part, to the highly technological equipment which is required.

2. The clarification of the 'scope of practice' again, is to eliminate the continual need to modify the existing laws as technological advancements dictate.
3. The definition of the 'functional foot' is a necessary revision, not only to insure that the most inclusive and definitive treatment is rendered to the foot, but to allow existing expertise to be rendered without creating a "grey area", (a legal language trap), with the possibility of misinterpretation by the legal community. Thus, allowing the professional liability companies the ability to defend the podiatrist, without limitations.
4. 80% of Americans will some day require foot care. In the interest of this public, the profession wishes to be unencumbered by the antiquity of the existing laws, and to be allowed to deliver the most advanced medical care and technology, by the most intensively trained in the specialty of feet.

#2
HB 437 & 438
2/10/89

of the foot during this time, causing some supination around the midtarsal joint axes. M. flexor digitorum longus has some inconsistent activity during this phase, probably related to helping M. tibialis posterior decelerate subtalar joint pronation (Fig. 2.10).

Summary of Contact Phase

The important elements occurring during contact phase are: (a) sagittal plane shock absorption by knee flexion and ankle joint plantarflexion, (b) absorption of internal leg rotation through subtalar joint prona-

tion, and (c) smooth transfer of body weight onto the contact limb.

Midstance

This is the portion of the gait cycle from 15% until the heel comes off the ground at 40%. The opposite foot has left the floor, and it is necessary for the body to maintain its balance over the single supporting limb and continue smooth progression of the center of gravity forward.

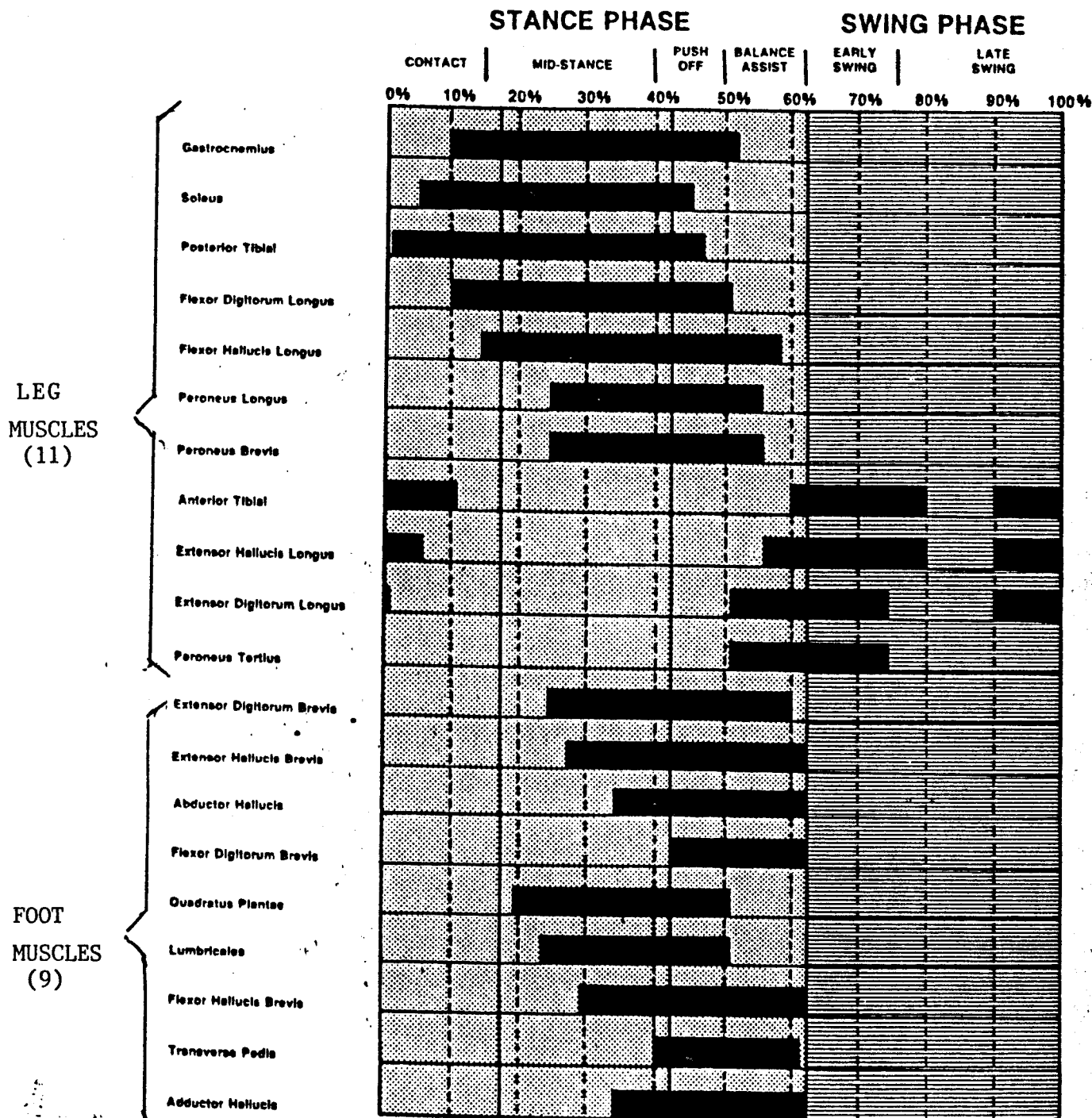


Figure 2.10. Phasic muscular activity. Graphic representation of muscular activity related to gait cycle.

WITNESS STATEMENT

NAME Dr Charles Janning BILL NO. SB-437-438
ADDRESS 1300 28th Street West St. Falls, Mt
59405

WHOM DO YOU REPRESENT? _____

SUPPORT X OPPOSE _____ AMEND _____

COMMENTS: _____

attached

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

13-438
439

GREAT FALLS ORTHOPAEDIC ASSOCIATES
PHYSICIANS' PROFESSIONAL CENTER, SUITE 5
1300 28TH STREET SOUTH
GREAT FALLS, MONTANA 59405
TELEPHONE (406) 761-1410

113
AB 437
2/16/8

J. W. BLOEMENDAAL, M.D.
PAUL M. MELVIN, M.D.

CHARLES D. JENNINGS, M.D.
SURGERY OF THE HAND

January 30, 1989

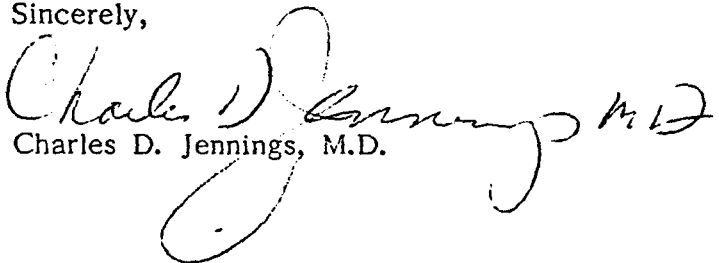
Mr. Rich. Tucker
156 Fairway Drive
Helena, Montana 59601

Dear Mr. Tucker:

I am writing this letter in support of a bill for an act entitled "An Act To Prohibit A Hospital, Except A Hospital That Employs Its Medical Staff, From Denying Staff Membership Or Privileges to Osteopaths and Podiatrists Because They Are Not Medical Doctors And Amending Section 50-5-105, MCA." Furthermore, I am writing in support of a second bill for an act entitled "An Act Revising The Laws Governing The Practice of Podiatry; Defining The Scope of Podiatry Practice; and Amending Sections 37-6-101 And 37-6-102, MCA."

I have worked closely for several years with a colleague, Dr. James Clough, who is a podiatrist. Based upon my knowledge of his work as well as a careful examination of the proposed bills, I feel that they should be passed as they have been amended.

Sincerely,


Charles D. Jennings, M.D.

CDJ:gg

(This sheet to be used by those testifying on a bill.)

NAME: James Clough DATE: 2, 16, 89

ADDRESS: 1416 Third Avenue North Great Falls

PHONE: 727-4548 (Home) 761-2222 (Office)

REPRESENTING WHOM? Montana Pediatric Medical Association

APPEARING ON WHICH PROPOSAL: Bill 437

DO YOU: SUPPORT? X AMEND? OPPOSE?

COMMENT: see attached

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.



#4
MB437

MONTANA PODIATRIC MEDICAL ASSOCIATES, P.C.

James G. Clough, D.P.M.
David B. Hugbner, D.P.M.

2/16/89

Reconstructive Foot Surgery
Preventive Sports Medicine
Children's Gait Clinic
Diabetic Foot Care

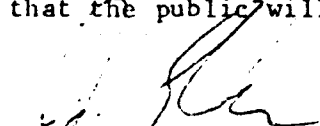
BILL 437

I, like many of my colleagues present today, have received extensive training in the care of foot problems. We have four year colleges, then podiatry school where the four year curriculum deals extensively with the human foot. Many of us, like myself, have also had postgraduate training in the surgical management of foot pathology. Our training is comprehensive relative to the management of foot problems. When different specialists are necessary for proper management, they are available and consulted. We work with a team approach, attending to the best interests of our patients.

Bill 437 would allow us to address the full scope of foot pathology. It would more clearly delineate the anatomical limitation of our practice and allow us to carry on the type of care which would be in our patients best interest.

The intention of legislature of this nature, I am sure, is not to limit those podiatrists trained in providing comprehensive foot care, but should represent the upper limitations of our profession. The law does not dictate that an orthopedic surgeon limit his practice to bone and musculoskeletal problems. However most do limit themselves because they do not have the expertise to be practicing other specialties. Likewise our podiatry scope should reflect similar purpose, that is, to provide a vehicle for well qualified practitioners to carry out comprehensive care and evaluation relating to the foot, which would be in the best interest of the public. Hospitals and other health care facilities will continue to carry the burden, as they do now, of credentialing practitioners. Credentialing of practitioners is not within the scope of the legislature, nor should it be a function of the legislature. I have submitted written testimony today from 2 orthopedic surgeons whom I personally have worked with. Both of these people can attest to the fact that I personally am qualified to carry out practice as described in this bill. I feel an unfair limitation has been placed on myself because of the present law. This needs to be revised.

I personally see the effect of this bill to have nothing but a positive effect on the care of podiatric patients and therefore feel that the public will be the main benefactor.


James G. Clough, D.P.M.

JGC:cms

WITNESS STATEMENT

NAME Mike Voeller BILL NO. 696

ADDRESS 1410 Sibelius Helena

WHOM DO YOU REPRESENT? Lee Enterprises

SUPPORT _____ OPPOSE ✓ AMEND _____

COMMENTS: _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

(This sheet to be used by those testifying on a bill.)

#5
2/16/89
HB 437 + 438

NAME: Cleveland Smith DATE: 2/16/89

ADDRESS: 412 Albert Helena

PHONE 442-9378 0 442-9523

REPRESENTING WHOM? Montana Political Associates

APPEARING ON WHICH PROPOSAL: HB 437

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

COMMENT: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

THE FOOT BOOK



A Guide to Podiatric Care



Podiatry
Information
Library

NAME: David Huebner, DPM. DATE: 2/16/89

ADDRESS: 1220 Central Ave, Suite 6D Great Falls

PHONE: (406) 454-0722

REPRESENTING WHOM? Montana Podiatric Medical Associates

APPEARING ON WHICH PROPOSAL: HB437

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENT: See attached

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.



Reconstructive Foot Surgery
Preventive Sports Medicine
Children's Gait Clinic
Diabetic Foot Care

RE: HOUSE BILL 437

Dear Congressman:

The purpose of the proposed changes in this bill are to more accurately define the role of the podiatrist as a foot specialist. The current law unfairly limits the scope of practice for those podiatrists who have the training to treat every aspect of the foot. These changes will not give podiatrists carte blanche to perform treatments for which they are not qualified for proper credentialing by hospitals and medical centers will define an individual physician's privileges.

I, as well as other podiatrists in Montana, have completed intensive hospital based surgical residencies which have prepared us for surgical treatment of the entire functional foot. Passage of this bill will more clearly define the scope of practice and allow the podiatrist as a specialist of the entire foot to provide the best care possible to the people in their communities.

Sincerely,

David B. Huebner, D.P.M.

DBH:cms

WITNESS STATEMENT

NAME Scott DeMars DPM BILL NO. 437

ADDRESS 926 Main St. #8 Billings MT 59105

WHOM DO YOU REPRESENT? myself

SUPPORT ☒ OPPOSE ☐ AMEND ☐

COMMENTS: see attached letter

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

#7
MB 437
2/16/89

SCOTT G. DEMARS, D.P.M.
PODIATRIC PHYSICIAN AND SURGEON
926 MAIN STREET, SUITE 8, BILLINGS, MONTANA 59105
(406) 245-8122

January 31, 1989


Business, Economic, and Development Committee

RE: Legislative change for the Montana Podiatric Practice Act.
Bill Number 437. Defining the scope of Podiatric medical
practice.

This bill defines the scope of practice for a podiatrist, the physician or surgeon treating disorders of the human functional foot, by all systems and means. This will allow any properly licensed D.P.M. (Doctor of Podiatric Medicine) in the state of Montana to treat all disorders of the anatomical foot as well as any structure directly attached to the foot which affects the foot's function. This treatment may be done by any system or means for which the individual podiatrist is qualified to perform based on his or her training.

Thank you for your support of this bill.

Sincerely,

 DPM
Scott G. DeMars, DPM
rl

Dr.

ADDRESS 2520 17th St West Billings, Mont

SUPPORT 4 OPPOSE _____ AMEND _____

COMMENTS: _____

Form CS-34A
Rev. 1985

Mathias H. Fettig, D.P.M.



78
HSA/37
2/14/89

Sports Medicine • Surgery of the Foot

January 30, 1989

BUSINESS ECONOMIC AND DEVELOPEMENT COMMITTEE

RE: Legislative change for Montana Podiatric Practice Act.

Bill #437: DEFINING THE SCOPE OF PODIATRIC MEDICAL PRACTICE.

The purpose of this bill is to define the scope of Podiatric medical service as a speciality having expertise in the care of the foot. Stating the Podiatrist may treat ailments of the human functional foot by all systems and means which are reasonable and customary within the state of Montana. Therefore, what we are asking is that the practitioner be able to practice within their scope of Podiatric medicine and surgery of the foot and treat the anatomical structure that influences the function and structure of that foot. Again, this scope of practice be based on each individuals training as well as their credentials within the hospital staff and community from which they practice in.

Thank you for the support of this bill.

Sincerely,

A handwritten signature in dark ink, appearing to read "Mathias H. Fettig".

Mathias H. Fettig, DPM

DC2-162

(This sheet to be used by those testifying on a bill.)

NAME: Dr LOREN L. ROGERS DATE: FEB 19/89

ADDRESS: 218 E. FRONT, MSLA, MT., 59801

PHONE: 728-7253, O. 542 2108

REPRESENTING WHOM? MT. Podiatric Med. Assoc

APPEARING ON WHICH PROPOSAL: H.B. 438, Hosp. Discrimination

DO YOU: SUPPORT? X AMEND? OPPOSE?

COMMENT: See ATTACHED.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

- A. The need for House Bill 438 exists because many hospitals in Montana have not addressed incorporating Podiatric physicians and surgeons on their staffs. The training and skills of the more recent podiatric physician and surgeons have advanced to the degree that their practice certainly would be limited by the denial of staff privileges. The present hospital credentialing process is very capable of judicating the proper level of privileges an applicant may be given. The joint commission on hospital accreditation has recommended since the mid-60's the inclusion of podiatrists on hospital staffs. The present system recommends co-admission with a M.D.
- B. Some fear that other allied health professions will use similar methods to obtain privileges, this would be addressed by the fact that M.D.'s D.O.'s and D.P.M.'s are the only professions with the designation of 'Physician and Surgeon'. It should be noted that these three (M.D.'s, D.O.'s and D.P.M.'s) require a minimum of 1 year post-doctorate training, in contrast to all others licensed under title 37.
- C. Those who would oppose this bill, should realize that it is being introduced in the best interest of the public. The use of hospitals, and the inherent peer review process, is the most effective method for the medical profession to insure quality health care.
- D. We (Podiatric Physicians and Surgeons) feel that with over 50% of the states now under comparable law, and another 20% on the verge of passing similar law, it is timely for our state to follow their lead. The people of the great state of Montana deserve the BEST foot care available.

Q&A



Hospital Privileges and the Joint Commission

Dennis S. O'Leary, president of the Joint Commission on Accreditation of Health Care Organizations, a prestigious and powerful group long held as the pinnacle of quality assurance of hospitals, dispels some myths about the commission's power to break down the barriers to full hospital privileges for podiatrists. Executive editor Judith A. Rubenstein conducted the telephone interview on December 2. An edited transcript follows.

What are the chief obstacles podiatrists face in gaining full hospital privileges?

Probably, more than anything else, it's human resistance to change. You have a lot of practitioners and a lot of healthcare organizations who have been through a pretty tough decade of change, almost all of which they had no control over. Throw one more piece of change on their plate and they get their backs up—that's human nature. I think podiatry has a pretty current successful track record in establishing itself in hospital settings. That doesn't mean a perfect world has been achieved, but a lot of physicians out there don't think a perfect world has been achieved relative to their practice in hospitals either.

And the key levers for change? In other words, who are the roadblocks?

The roadblock is resistance to change which comes from people—they are all human beings. They're saying, "We've been through enough here."

In setting up criteria for specialty care, cross specialty conflicts are likely to arise. What possible solutions to these conflicts do you propose?

I still think that the credentialing and privileging process has the capacity to address cross-specialty conflicts. It is inevitable that territorial issues will arise between specialties, particularly when you get down to the privileges process. But

there are various kinds of independent, valid ways that an individual demonstrates his or her competence. That doesn't require identical training or experience.

There should be ways to satisfy the medical staff in telling them that this individual is qualified to do a, b, or c. You either have gone through good training, specialty training following graduation, or have a lot of experience in doing something and someone else is willing to testify to that. Sometimes when an individual is reviewed, there remains some doubt in the minds of the medical staff. Then the logical thing would be to allow the individual to do it, but under supervision or monitoring, so that he can be observed in performing the procedure. With observation, it can be determined if he or she is competent.

Q & A

cedure well, needs more monitoring, or should not be permitted to do that procedure. It's really a common sense approach that says you shouldn't make arbitrary or capricious decisions.

Have you noticed any change in the willingness of administrators to buck internal medical staff politics to obtain full privileges for podiatrists?

I really do not have any meaningful data on that. If there's a hot issue bubbling around out there, we usually hear about it. I haven't received any correspondence either from disgruntled medical staff or frustrated administrators concerning privileges for podiatrists in a long, long time. That doesn't mean the system is working, but it doesn't mean it's not working either.

Do you think it's a dead issue?

I don't think any issue is ever dead, maybe quiescent. It may mean that the organizations are becoming more facile in the credentialing and privileging process. Or that hospitals and their medical staffs are becoming more sophisticated in their understanding of these processes, which tends to make the process more objective and a

little bit less heated. People will kill over theoretical issues, but when you get down to nuts and bolts issues, the heat tends to dissipate.

Informed sources charge that in the credentialing process, a double standard prevails, that podiatrists are held to much higher standards than orthopedic surgeons.

That's an allegation. Others may see it quite differently.

How does a hospital or the Joint Commission set meaningful standards for credentialing any specialty, podiatry included, whose practitioners are allowed to perform foot and ankle surgery?

Let's make some semantic distinctions here. We set standards relative to organization, structure, and function. Those are different from clinical standards or clinical criteria which, in accordance with our standards, we say the organization—in this case, the medical staff—must set. We expect those clinical criteria to be applied even handedly, depending on what kind of privileges we're talking about.

The criteria do differ depending upon the kind of privileges. If you take care of diabetics, you don't need surgical training,

but if you want to do surgery, you need surgical training. We require the organization to set the criteria. We expect the criteria to be used in such a fashion to ensure comparable care. It is not reasonable to expect the criteria to be identical. An orthopedic surgeon has training that is different from a podiatrist. The two types may well be comparable, but that is a judgment the hospital makes, not the Joint Commission.

Can the commission ever act to resolve conflict among specialties?

We would probably serve as a convener of a group to promote resolution of the issues. We've certainly had lots of experience doing that before. But on the front end we don't want to presume there will be conflict on every area of clinical indicator development.

Just what does the Joint Commission do?

Fundamentally, the Joint Commission has four roles. (1) Standard setter. We have been setting standards for hospitals and other kinds of healthcare organizations for about seventy years—if you include the hospital standardization program of the American College of Surgeons. The Joint Commission has always enjoyed a unique advantage as a convener. Generally speaking,

when a determination is made that it is appropriate to write new standards in a given area in order to reflect state of the art practices, we try to bring in outside experts from around the country who can speak to the standards area question. But it goes beyond that. Health professionals feel a responsibility to participate in the standards program.

(2) Evaluator. All our evaluation activities are based on our standards. However, today not all our evaluation activities lead to an accreditation decision. We conduct some evaluations under contract with third parties such as state evaluators of managed care organizations, particularly HMOs and state agencies responsible for Medicaid programs. They have an obligation to ensure that Medicaid patients are receiving good care.

(3) Decision maker. We make accreditation decisions. We evaluate against our standards, analyze our findings, and come to a conclusion as to whether the organization should be accredited, accredited with contingencies, or not accredited. Basically, amongst hospitals, one percent are accredited without contingencies, approximately one percent or more are not accredited, and ninety-eight percent are accredited with contingencies. The contingencies may range from one to many. Almost all

the ninety-eight percent successfully address their contingencies. In some cases, resolving it is relatively straightforward. About eight percent of this group enter an informal status, called tentative non-accreditation. We don't publicize it. Tentative non-accreditation means they are not performing acceptably in our view. About seven out of eight in that group resolve their problems.

(4) Educator and consultant. We work with hospitals to improve their performance, to assist them in resolving the problems they have. Our surveys have also been in part evaluation and in part consultation, suggesting ways that hospitals who are not in compliance with standards can get themselves into place and in compliance.

Is accreditation voluntary?

I don't think anybody absolutely must use our services. In that sense, anyone who comes to us for any of our services does so on a voluntary basis, but there are compelling incentives, particularly for hospitals and, to some degree, other types of healthcare organizations to seek our services. Hospital accreditation in particular is linked to the governmental regulatory process both at the federal and state levels such that the Medicare program accepts accredita-

tion as meeting the conditions of participation. We have a relationship with forty-two states that accept Joint Commission accreditation as meeting their state hospital licensure requirements. In addition, hospitals that have graduate medical education programs must be accredited by the Joint Commission. Practice insurers like to see that the institutions they insure are accredited. Some people who loan money to hospitals in particular like to see them accredited. Health insurers like to see the organizations to whom they provide reimbursement accredited. So there are many incentives for hospitals to seek accreditation. But obviously there are hospitals that are not accredited and they are doing just fine—at least some of them are.

What authority, if any, does the commission have and by whom is it empowered?

The Joint Commission is essentially a private sector, professionally based organization, not empowered by anybody. It was created by the health professionals out of a sense of responsibility to do everything possible to stimulate and promote high quality care in hospitals and, now, other health organizations as well. It gained a lot of credibility, so a number of

continued on page 64

Q & A

responsible government agencies felt the Joint Commission could do the external evaluation better than they could and came to depend upon it to do that job.

Where does its funding come from?

Basically, it is self supporting. Organizations that are surveyed pay survey fees; educational seminars are put on for a registration fee; publications and consultation services are sold. Approximately two-thirds of our revenue comes from survey fees, which, from our standpoint, is the cost of doing business. It's not unlike the annual audit that an organization goes through. Theirs is a financial audit, this is a quality of care audit that happens to occur every three years, although we visit problematic hospitals much more frequently.

To whom is the commission responsible?

To its board of commissioners, which is made up of representatives of the five member organizations: the AMA, the American Hospital Association, the American College of Surgeons, the American College of Physicians, and the American Dental Association. Once the organization enters into certain statutory or contractual relationships, it has certain contractual obligations and accountability in terms of those relationships. This is also true in our relationships with the forty-two states and other contractual relationships, such as reviewing managed care facilities for states.

We are told that a special meeting was held last March at which a task force on anaesthesia was proposed. What is the status of that committee?

[Dr. O'Leary did not recall the specific meeting.]

Well, we were informed that the intent was to convene members of the various specialties and disciplines within the healthcare delivery system to propose better ways to deliver care to the patient populace.

Basically we said we were going to put together clinical indicator task forces and put the best people around the table, which might involve people with different background. There were no podiatrists in that anaesthesia group—and no surgeons, either.

Have you set up such task forces with

respect to podiatry and orthopedics?

Not yet.

Do you intend to?

I don't know. We had three special task forces last year: obstetrics; anaesthesia; and hospital-wide generic indicators, which cuts across all sorts of services. We created three more this year: cardiovascular, oncology, and trauma. And we have three more that are next in line: long-term care; dental health care; and general surgery. We have not picked the next grouping. I think our long-term feeling is the Joint Commission should not be the sole locus for clinical indicator development, because if that is the case, when all the clinical indicators are developed, they will be ours and that is pretty narrow. The purpose of clinical indicators is to set screens to evaluate the quality of patient care.

Then it seems the key issue is how to promote the active involvement of a variety of other professional groups and organizations for clinical indicator development.

We've learned a lot about doing clinical indicator development, but it's not so profound that only the Joint Commission can do it. The investment of other organizations becomes important because it would promote professional ownership of these indicators.

Will podiatrists be consulted and included in the development of clinical indicators on foot care?

I don't know, but that doesn't preclude the effort. Podiatrists could sit down and develop clinical indicators.

Would the Joint Commission accept them?

Yes, if they are good. We want to develop effective tools for evaluation that support the provision of high quality care. We are an advocate primarily for the patient and not an arbitrator between professional groups. If the man in the moon developed effective indicators relative to foot care, we'd probably use them.

Who would make this decision?

We have a pretty sophisticated research and development department that knows how to look at indicators. If we think they are conceptually sound, we have a basis for conceptually testing them. It is a painfully objective process.

What recommendations could the Joint Commission make to ensure that such a credentialing process is

equitable and standard for all specialties who are allowed to perform foot and ankle surgery?

I don't think anyone would ever be foolish enough to require that they be the same—only that they should be comparable. The orthopedic surgeon trains longer than the podiatrist does. It would be to the podiatrist's great disadvantage to clamor for the same criteria to be applied.

Has there been a change in the past few years?

I don't have any basis for making that kind of judgment. We're not hearing a lot of complaints and problems, in fact, virtually nothing. Our standards are appropriately permissive in that respect. Judgment is up to the hospital. If there is a conflict or an anti-trust concern, that's more likely to be resolved in the courts. I haven't even seen a lot of litigation activity in the past couple of years.

Podiatrists perform up to seventy-five percent of all the foot and ankle surgery in this country. They have a meaningful role in more than fifty percent of the hospitals in this country. Therefore, why is it that as a profession, podiatry does not have direct input into the Commission? Why isn't the profession directly involved with the commissioners in helping to establish and maintain high standards of foot and ankle care within hospitals?

The podiatrists do have input. They do sit on at least one professional and technical advisory committee, long-term care, I think. We're in communication with the podiatrists, as we are with a lot of groups.

What would be your position on non-M.D. healthcare providers within the hospital setting? Should they have privileges? Should they also have complete and full activity on the medical staff?

We define a group of people as licensed, independent practitioners. From our standpoint, those individuals are eligible to be members of the medical staff and, therefore, must be privileged. Whether or not the hospital decides to have those people on staff, or on the executive committee, or involved in the governance process is also the hospital's determination.

Thank you, Dr. O'Leary. ■

Podiatric Services in a Hospital: An Overview

MARIE M. KIERNAN

The integration of foot care by doctors of podiatric medicine into a hospital setting has been shown to be beneficial to both the patient's well-being and the hospital's revenues. Hospital accreditation standards issued by the Joint Commission on the Accreditation of Health Care Organizations (Joint Commission) and the American Osteopathic Association (AOA) provide for the granting of active staff membership to doctors of podiatric medicine at the discretion of the individual hospital. Statutes, i.e., administrative or judicial actions providing for the nondiscriminatory treatment of the medical staff applicant, exist in the District of Columbia and more than 25 states.

There is an economic benefit to a hospital and its patients when doctors of podiatric medicine are staff members. Podiatric services are easily incorporated into the structure of a hospital. Doctors of podiatric medicine can use the existing surgical suites and equipment; thus, there is little or no additional capital expenditure on the part of the hospital.

Hospital Accreditation Standards

The 1988 standards of the Joint Commission provide that the medical staff:

"Includes fully licensed physicians and may include other licensed individuals permitted by law and by the hospital to provide patient care services independently in the hospital." Standard Ms.1, Required Characteristic Ms.1.1, *Accreditation Manual for Hospitals*, 1988 Edition, AMH/88.

The Joint Commission defines the licensed independent practitioner as:

"Any individual who is permitted by law and who is also permitted by the hospital to provide patient care services without direction or supervision, within the scope of his license and in accordance with individually granted medical privileges."

State law is key in determining the eligibility of the practitioner to perform patient care services independently. All states, Puerto Rico, and the District of Columbia recognize the legal authority of the doctor of podiatric medicine to perform patient care services independently within a specific scope of practice. No state or jurisdiction requires the supervision of the doctor of podiatric medicine in performing podiatric services as defined in state law. Indeed, several states have specific statutory and regulatory provisions which authorize the doctor of podiatric medicine to be a member of the hospital medical staff, to hold clinical privileges within hospitals, and to have responsibility for patient care. Statutes exist in the District of Columbia and the states of Alabama, Arizona, California, Colorado, Connecticut, Florida, Georgia, Illinois, Louisiana, Maryland, Massachusetts, Michigan, Missouri, Nevada, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, and Wyoming.

The standards of the Joint Commission stress the uniform application of professional criteria for the granting of privileges:

"Professional criteria specified in the medical staff bylaws and uniformly applied to all applicants or medical staff members constitute the basis for granting initial or continuing staff membership." Standard Ms.1, Required Characteristic Ms.1.2.

The Joint Commission standards further state that the purpose of the criteria is to assure quality patient care. The criteria should be reasonable, related to quality care, and pertain to "evidence of current licensure, relevant training and/or experience, current competence, and health status." (Standard Ms.1, Required Characteristic Ms.1.2.3).

In July 1988, the American Osteopathic Association, the accrediting organization for osteopathic hospitals, revised the standards for staff membership and privileges in osteopathic hospitals to allow active staff membership to practitioners other than doctors of osteopathy:

#3
11/3/88
2/16/89

"The organized professional staff must include that category of active staff membership. This category may, at the discretion of the individual hospital, be expanded to include other practitioners as indicated in Section 4 a.) (ii) and (iii) below.

a.) A doctor of osteopathy or medicine;

b.) A doctor of dental surgery or dental medicine who is licensed to practice dentistry by the state and who is acting within the scope of his or her license;

c.) A doctor of podiatric medicine, who is licensed to practice podiatry by the state and who is acting within the scope of his or her license."

The standards of the American Osteopathic Association, like those of the Joint Commission, require that membership and privileges be based on the qualifications and demonstrated ability of the applicant.

The American Podiatric Medical Association (APMA) supports the practice that the granting of medical staff membership and clinical privileges to doctors of podiatric medicine be based on the individual's education, training, experience, and demonstrated competence and judgment within the legal scope of practice for podiatric medicine. Further, APMA recommends that the credential committee of a hospital evaluate the experience and training in podiatric procedures on an individual practitioner basis. This position is consistent with that of the Joint Commission, AOA, and the American Medical Association (AMA).

The Future

The benefits of foot care by doctors of podiatric medicine to hospitals have been well documented. Recent studies by the Johns Hopkins University and ELM Services report significant cost benefits due to the doctor of podiatric medicine's lower professional charges and more efficient use of hospital ancillary services. Hospital administrators and managers have noted that podiatric physicians represent a preferred patient mix—short length of stay, low acuity, high functional outcome. And doctors of podiatric medicine are substantial users of day surgery and outpatient services. It is expected that rapid growth in the elderly population and the popularity of specific sports will create more demand for the services of doctors of podiatric medicine. Given these documented facts, foot care by doctors of podiatric medicine will become an increasingly attractive patient resource for US hospitals.

(This sheet to be used by those testifying on a bill.)

NAME: James Clough DATE: 2, 16, 89

ADDRESS: 1416 Third Avenue North Great Falls

PHONE: 727-4548 (Home) 761-2222 (Office)

REPRESENTING WHOM? Montana Podiatric Medical Association

APPEARING ON WHICH PROPOSAL: Bill 438

DO YOU: SUPPORT? X AMEND? OPPOSE?

COMMENT: see attached

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

#4
NRB 638

MONTANA PODIATRIC MEDICAL ASSOCIATES, P.C.

James G. Clough, D.P.M.
David B. Huebner, D.P.M.

2/16/89

Reconstructive Foot Surgery
Preventive Sports Medicine
Children's Gait Clinic
Diabetic Foot Care

BILL 438

This bill is introduced to mandate hospitals to give consideration to podiatrists and for privileges and staff membership based on their training, education, experience, and demonstrated competence and judgement within the legal scope of podiatric medicine.

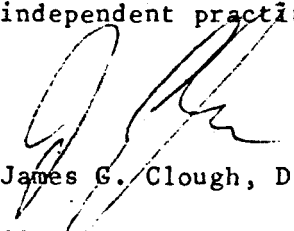
We as a group are defined as independant practitioners in all 50 states, the District of Columbia, and Puerto Rico. We also meet the Joint Commission of accreditation of hospital's definition of an independent practitioner which states, "Any individual who is permitted by the hospital to provide patient care services without direction or supervision, within the scope of his license and in accordance with individually granted clinical privileges."

Several states have specific statutory and regulatory provisions which authorize the doctor of podiatric medicine to be a member of the medical staff, to hold clinical privileges within the hospitals and to have responsibility for patient care similar to the provisions as set forth in this bill. That 28 state total includes the District of Columbia, Alabama, Arizona, California, Colorado, Connecticut, Florida, Georgia, Illinois, Louisiana, Maryland, Massachusetts, Michigan, Missouri, Nevada, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, and Wyoming.

The guidelines of the JCAH stress this uniform application of professional criteria for the granting of privileges. This bill certainly is not in conflict with any JCAH policy.

As a matter of fact, none of the JCAH policies would be violated by this bill. If anything, they could be made more clear to the hospitals of Montana.

The burden of credentialling individual practitioners will remain within the scope of hospital staffs. However, shouldn't a well qualified podiatrist be given the same considerations as any other independent practitioner?


James G. Clough, D.P.M.

JGC:cms

(Mathias H. Fettig, D.P.M.



Sports Medicine • Surgery of the Foot

January 30, 1989

BUSINESS ECONOMIC AND DEVELOPMENT COMMITTEE

RE: Legislative change for Montana Podiatric Practice Act.

Bill #438: NON-DISCRIMATORY CLAUSE

The purpose of this bill is to prohibit a hospital from denying staff membership or privileges based on their medical degree. The purpose is that the individual be critiqued only on their individual credentials not their degree or their medical practice. i.e. Examples of Osteopaths and Podiatrists because they are not medical doctors with the M.D. degree. Therefore a person's hospital privileges be based on their credentials and their training verses their degree or their title.

Thank you for your support on this bill.

Sincerely,

A handwritten signature in dark ink, appearing to read "Mathias H. Fettig".

Mathias H. Fettig, DPM

DC2-161

WITNESS STATEMENT

NAME Scott DeMars DPM BILL NO. 438

ADDRESS 926 Main St. #8 Billings MT 59105

WHOM DO YOU REPRESENT? myself

SUPPORT ☒ OPPOSE ☐ AMEND ☐

COMMENTS: see attached letter

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

#6
HB 438
2/11/89

SCOTT G. DEMARS, D.P.M.
PODIATRIC PHYSICIAN AND SURGEON
926 MAIN STREET, SUITE 8, BILLINGS, MONTANA 59105
(406) 245-8122

January 31, 1989

Business, Economic, and Development Committee

RE: Legislative change for the Montana Podiatric Practice Act.
Bill Number 438. A nondiscriminatory clause.

This bill is intended to prevent a hospital from denial of privileges to a properly licensed physician based on his or her degree or type of practice. Therefore, hospitals will grant privileges based on the applicant's training and qualifications. For example, a podiatric physician or D.P.M. and an osteopathic physician or D.O. will be given privileges according to his or her credentials just as is done for the physician with an M.D. degree.

Thank you for your support of this bill.

Sincerely,

Scott G. DeMars DPM
Scott G. DeMars, DPM
rl

(This sheet to be used by those testifying on a bill.)

NAME: David Huebner DPM. DATE: 2/16/89

ADDRESS: 1220 Central Ave, Suite 6D, Great Falls

PHONE: (406) 761-2222

REPRESENTING WHOM? Montana Podiatric Medical Associates

APPEARING ON WHICH PROPOSAL: HB438

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENT: see attached

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.



MONTANA PODIATRIC MEDICAL ASSOCIATES, P.C.

James G. Clough, D.P.M.

David B. Huebner, D.P.M.

Reconstructive Foot Surgery
Preventive Sports Medicine
Children's Gait Clinic
Diabetic Foot Care

Handwritten notes:
#7
H13 4/38
2/14/89

RE: HOUSE BILL 438

Dear Congressman:

This bill is designed to mandate that equal consideration and due process be given to a podiatrist applying for hospital or medical center staff privileges as would be given to any other physician. This bill will eliminate the unfair discrimination of the podiatric profession as a whole, and will insure that podiatrists are given the same basic rights as all physicians. An individual podiatrist can then be considered for appointment and scope of privileges with a hospital or medical center based strictly on their training and skills, and not excluded because of their degree.

Many podiatrists, like myself, have completed hospital based surgical residencies and feel that a hospital is the most appropriate place to perform reconstructive foot surgery. Some patients who require foot surgery also require monitoring and treatment for coexisting health conditions, necessitating a multi-disciplinary approach to their health care. What better place for this than in a hospital? With passage of this bill, those podiatrists who are qualified, can be considered fairly for hospital and medical center privileges, and thereby work more closely with other members of the medical community to provide the best care possible for their patients.

Sincerely,

David B. Huebner, D.P.M.

DBH:cms

#1
2/16/88
HB 617

**Testimony for HB 617
A Community Reinvestment Act for the
State of Montana
February 16, 1988**

Mr. Chairman, members of the committee, for the record my name is Rock Ringling. I'm here today representing the Montana Alliance for Progressive Policy, a coalition of groups representing women, low-income, seniors, education, labor and conservation.

For the past several sessions, this committee has heard a great deal about banking. The main issue has been bank merger and consolidation. This has primarily been a debate within the banking community. Most of you probably found it very difficult to know what was best for the consumers in your district. This bill was designed to disclose information on bank performance at investing in our communities. We believe it will give you and other Montanans the information necessary to decide key bank deregulation issues in the future.

HB 617 speaks for the concerns of our members in the continued debate surrounding bank deregulation and community economic development. We supported the bank merger and consolidation bill, but continue to believe that the people of Montana should be provided with a clear picture of who is and is not aggressively investing in our communities and Montana.

We believe there are serious problems in banking in Montana. Montana banks invest a lower share of their assets in local businesses and individuals than do banks nationwide, and invest instead in low-risk, out-of-state, income-earning assets such as corporate and government bonds. Montana banks were

recently ranked 43rd in the nation in their ratio of loans to equity (Making the Grade, p.63). Idaho ranked 33rd, South Dakota 26th, and Oregon 5th. Oregon's loan to equity ratio was over five times that in Montana. In other words, the banks in some of our neighboring states are loaning out a greater portion of their equity than Montana banks.

As a consequence, Montana banks consistently earn higher profits than banks in other mountain states and are generally much more profitable than the national average (data published by the FDIC).

A second reason for this bill is the continued deregulation of financial institutions. Other states are responding as this bill proposes. In the face of deregulation, 25 states have enacted disclosure laws of one type or another. 7 states have enacted CRA laws similar to this bill, 18 have established some type of reinvestment standards primarily covering interstate banking, and 15 states have enacted link deposit programs.

Of course, there are banks which aggressively service their communities and Montana's credit needs. We understand that not all banks are the same, but there should be some type of impartial judgement so that people can determine their bank's performance.

We ask the committee today to consider HB 617 as a means to let the public of Montana have a clear look at bank performance in the light of continued deregulation effort. Please consider a due pass motion for HB617.

HB 617
2/16/89

HB 617

"COMMUNITY REINVESTMENT"

Montana House of Representatives

~~Legislative Administration Committee~~

February 16, 1989

*Business & Economic Dev
Rm 312-3*

Testimony presented by:

Lynn Robson

(406) 587-4077

1014 S. Grand

Bozeman, Mt 59715

7 years JTPA program director

3 years National Displaced Homemaker Board of Directors

Convener, Women's World Banking/Montana

Funder and originating Director, Headwater's Entrepreneurial Resources: a micro-business incubator

Over the past several years the term "economic development" has commanded the lion's share of conversations in Montana. When we discuss tax structure, education, job training, tourism marketing, child care...you name it...somehow, those subjects all come around to "economic development". Raising enough revenue just to provide basic services to Montana's citizens becomes part of the discussion. When we talk about developing our economy there are some basic tenets endemic to the discussion:

- 1 do not export jobs from your constituency,
- 2 do not export capital to the greatest extent possible,
- 3 import capital
- 4 develop community-grown employment rather than imported employment for stability and multiple-goal solution,
- 5 extend economic worth to your constituency of natural resources, existing job base and capital to the greatest extent possible through value added activities.

HB 617 addresses these tenets and many of the specific issues facing the 1989 Montana Legislature. It addresses these issues through an established and tried method, through community reinvestment.

Refer
The Economic Development & Law Center Report, Spring, 1987 presents a very concise description of the federal Community Reinvestment Act (CRA). The Act was passed in 1977, as Title VII of the Housing and Community Development Act (Public Law 95-128). The CRA is one of many legislative efforts to stop redlining, discrimination and disinvestment by financial institutions. The CRA addresses discrimination against neighborhoods, not just individuals, with a concern for economic revitalization. As part of their compliance, financial institutions covered by the CRA must:

- * publish a CRA statement describing the institution's lending community geographically and the types of credit available to the community, further, it must describe how they identify the credit needs of the community;
- * establish a CRA public comment file on the quality of the institutions's service to the community...the file must be open for public input and inspection;

* post a CRA notice indicating that the statement and public comment file are available.

When I read this article in 1987 I phoned the Department of Commerce to inquire about its use in this state. At that time, my agency, Women in Transition was assisting several clients in starting their own businesses and capital access was a real barrier. Some of the businesses were not started due the lack of capital and others were started using capital found in bits and pieces and even out of state. Several of those businesses are now nation-wide, importing capital, and employing many people. We missed some start-up opportunities and delayed expansion with these businesses due to lack of local capital. The Department of Commerce informed me that "nothing" was being done to implement or even monitor the existing CRA.

Recently, as I have investigated the possibilities for establishing a Montana "affiliate" of Women's World Banking I have discovered to my surprise the very low rate of commercial loans Montana banks make. The rate is 40% compared to most state rates of 80%. One bank in Butte has a rate of around 20%. Compounding this interesting data is the low rate of earning comparable to other states that Montana bank's enjoy--due to low rate of activity. A credit to the conservative practices of Montana banking is the stability of the institutions...but there must be some balance we could move to, and perhaps the CRA is the gentle nudge needed to break the rut of old habits. Bankers I have talked to confess they loan to entities which make them comfortable, that they are not purists in rational deduction. What a relief to know they are like the rest of us. Change of old habits is never easy and sometimes the function of government is to lead the way.

Refer There are two arguments usually applied against a CRA: 1) increased reporting, and 2) lower return on bank investments.

With the computerized services banks use all the data required by a CRA is already in bank's information centers. Calling up the data in a new form requires a simple programming which already exists in other states most likely available for model.

Investments in non-traditional ventures does not necessarily mean a lower return. Studies done on "socially responsible investments" (SI) show that they can be at least as profitable as more traditional investing. One of the broadest SI profit indicators, the South Africa-free S&P, shows the conventional Standard & Poor's 500 Index ahead of SI by three tenths of 1 percent over 10 years, but neck and neck for the first seven months of 1988. A narrower index, the Good Money industrial average, designed by Ritchie Lowry, a professor of sociology at Boston College, approximates the Dow Jones industrial average in range of industries and size of companies represented. From January 1, 1977, when Lowry's records begin, through mid-July of this year, the Good Money average rose 476 percent, outpacing the Dow's 110 percent increase by a factor of four. Another piece of supporting evidence: For the first six months of 1988, Parnassus and Ariel Growth funds, two SI mutual funds, were number four and five, respectively, among 1,449 funds tracked by Lipper Analytical Services of New York. Parnassus returned 39 percent on investments; Ariel Growth, 36 percent. No one should confuse investing with philanthropy."

Nancy
Griffin

Why are we interested specifically in women? We are interested specifically in women owned businesses because of the 20,000 female heads of household in Montana earning 43¢ on the dollar for all other households, because of the high incidence of female householders using public assistance (which we are anxious to reduce), because women make good entrepreneurs due to their lower "risk taking" inclination and therefore their lower rate of business failure, because women often have little experience with financial institutions and they have little credit history, few or no assets to put up for collateral and because studies show women owned business are more inclined to be concerned with the socially right kind of business practices we can use in this state.

What can we do to mitigate the risks incurred with non-traditional loan applicants? We can use the burgeoning system of community business technical assistance programs in Montana. Butte, of course, was the first, the Department of Commerce established its Small Business Development Center, Kalispell, Missoula, Bozeman, Havre all have programs. Billings, Great Falls and Miles City are developing programs. The state Ag Extension program offers technical assistance to businesses and Montana State University houses a fledgling Small Business program. These programs can provide business development plan assistance, development technical assistance and monitoring so that when bankers see applications they are well thought out and have monitoring following up the use of initial loans and lines of credit.

A final note. David Birch in An Economy in Transition provided to "A Conference for Montana's Economic Future" in 1986 pointed out that Montana's growth can be attributed to small companies. Firms with 20 or fewer employees created 6,200 jobs while large firms lost 4,000 jobs for a net gain of about 2,200 jobs. Virtually all the new jobs were created by "home-grown," local companies--3,700 in all--while firms whose headquarters were out of state cost Montana 1,500 jobs. Dr. Birch identified 256 significantly growing companies in Montana. He said that if we want to be more than a third world country, to be competitive we should have more like 2,000 significantly growing companies. Economists are always full of bad news. His final dismal comment was to point out that Montana ranks 47th in the number of significant start-ups occurring in the years 1982-1986 and that we rank 50 out of 51 in the number of young companies that grew significantly during that time.

This is the era of private market effort. Instead of more federal and state funding for economic development we have a tool we can work together to develop. The banking industry should not suffer a negative burden, but we can lead the way in supporting and encouraging investment of capital where the depositors live. I encourage you to vitalize and establish the Montana CRA.

#2
HB 611
2/16/82

Montana Community Reinvestment Act

Intent to establish a Community Reinvestment Act for the state of Montana Following is a short section by section explanation of the bill.

Section 1. Section 2-15-1803, MCA, State banking board composition will change to include one member from a low-income organization. Stating that one of the public members must be a representative of a low-income organization.

Section 2. institutions to which chapter is applicable defining what a "bank" is. Definition states depository institutions and credit unions

Section 3. section 32-1-109, MCA is amended to read. gives definitions of merger and consolidation, capital, demand deposits, department, net earnings, profit and loss. Defines small business and very small business those that employee less than 10 people.

Section 4. Powers and duties of the board

Section 5. This section outlines the Examination and supervision authority of the department

Section 6. Community reinvestment responsibility of banks. Defines basic service area and definitions of low-income neighborhoods and peoples.

Section 7. Annual disclosure report determination of service areas and public notice.

Section 8. Community reinvestment disclosures of loan types.

Section 9. Eligibility to participate in state-funded programs.

Section 11. Conditdions for banks with unacceptable community reinvestment ratings

WOMEN'S LOBBYIST FUND

Box 1099
Helena, MT 59624
449-7917



#3
HB 617
2/16/89

H.B. 617

Recommend: Do Pass

This is probably the best bill to boost Montana's economy that you will hear this session! A healthy local economy depends upon buying locally--spending your money at home. The reports asked for by H.B. 617 will allow state investments and deposits to be made in Montana banks that support Montana communities.

Investing in Montana is a good investment, the productivity and creativity of our workers is well known. We are, for the large part, an economy of small businesses and agriculture, whose capital access has been jeopardized by investments made in out of state businesses.

It is the lack of wage opportunity in our state that drives our citizens to private business. It is sound economic policy to capitalize on the opportunity for the generation of new economic growth by the reinvestment of local capital.

Women comprise nearly 44% of the labor force. They make 50.5¢ for every dollar a man makes. There are 19,952 female headed households in Montana. 10% of all families are headed by a single female. Over one-third of these families live below the poverty level. Social commentators call this the "feminization of poverty". It isn't that these women aren't smart, or aren't hard workers, or don't have creative ideas--it's because they don't have a man and can't get credit. In discussion of this legislation with women in businesses in Montana they all have stories of the difficulty of securing capital when their debt repayment records and collateral valuations were solid. A female state executive, earning more than her husband--denied a housing loan unless it contained her husband's name on the application. A female partner in an agricultural equipment business--denied a loan for purchase of majority shares of the business which had established a successful credit history.

This bill probably won't ease the difficulty of access to credit by women, but it will help assure that those banks who provide equal access to credit will be the beneficiaries of our hard earned tax dollars. This legislation promotes public policy which encourages investment in women owned businesses and may begin to break the cycle of feminine poverty.

I have submitted amendments to H.B. 617--a good bill for Montana--which clarify that a bank's disclosure statements also track the dollar value of loans to those businesses which are owned by women. This information will be invaluable to programs which assist women in profitable operation of their own businesses.

Reinvest in Montana--Give a Do Pass to H.B. 617.

MONTANA WOMEN'S LOBBYIST FUND

P.O. Box 1099

Helena, MT 59624

406/449-7917

Amendments to House Bill No. 617
First Reading Copy

For the House Committee on Business and Industry

Prepared by Montana Women's Lobby
February 16, 1989

1. Page 8, line 13.
Following: minorities,
Insert: and women,

2. Page 10, line 3.
Insert: (d) the number and aggregate dollar amount of housing,
commercial, very small business, small business, agricultural and consumer
loans made to businesses whose majority ownership are women.

#3

HB 617
2/16/89

#4
2/16/89
HB 617

WITNESS STATEMENT

NAME Marlene Teague BILL NO. 617

ADDRESS 2710 Lincoln Rd E Helena

WHOM DO YOU REPRESENT? _____

SUPPORT _____ OPPOSE X AMEND _____

COMMENTS: _____

Reg BB already regulates state
and national banks regarding CRA

Increased cost to banks will result
in passing costs onto our depositors
and borrowers

This bill represents duplication of
a process in place.

Reg B also covers discriminated
Banks aren't discriminating - if a loan can
be made it will be. Better margin in loans
than other investments plus ability to build a
total relationship between customer and bank.

This bill is a duplication of existing process

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

#21
2/16/68
NIB 62

**AMENDMENTS TO HOUSE BILL 627
PROTECTIONS FOR EMPLOYEES UNDER PRIVATIZATION**

The following protections for employees are necessary under efforts to privatize services by any governmental unit:

1. A policy of no lay-offs. Public employees should be assured of comparable employment within their county at similar wage and benefit levels. Just like the governor's current proposal to protect existing deputy department directors and division administrators during transition from one administration to another, rank-and-file employees should be guaranteed comparable employment.
2. Require the successful bidder to offer the right of first refusal to affected state employees for all job openings at similar or better pay and benefit levels. Such a requirement assures state employees that they have a reasonable opportunity to obtain jobs in the private sector for which they are fully trained.
3. Give priority consideration during the competitive bidding process to firms that agree to hire displaced state workers.
4. Protection for transferred employees against pay reduction. This guarantee would apply to displaced workers even though they may be placed into lower level skilled positions.
5. Set aside a percentage of the savings from the withdrawal of the state from the retail liquor business for job retraining and placement within the county where they live. The key to reducing the governmental work force is to place these workers in jobs in the private sector. Retraining may be the key to successful placement of dislocated governmental workers.
6. Offer early retirement benefit packages to displaced workers. Offering early retirement can often be less expensive than retraining or transferring personnel.
7. Reimburse public employees for lost pension benefits and other lost benefits. One of the most important ways in which public employees stand to lose when they are forced to leave government to work in the private sector is through forfeited pension benefits. Either these benefits could be made portable so that the move would not affect their accumulated retirement benefits, or they should be provided an annuity worth the employee's accumulated pension benefits. All other accumulated benefits should be paid at full value as if worked.
8. Reserve all in-house service job openings for displaced workers. One method of insuring that employees receive similar jobs that open through

normal attrition is to create an in-house priority placement program.

9. For terminated employees who are not subject to the no lay-offs policy, adequate severance pay. Severance pay is commonly accepted in the private sector and is appropriate in these instances as well. One month's pay and benefits for every year of service is an adequate level.

10. In service areas which are covered by a collective bargaining agreement, the successful bidder must recognize the collective bargaining agent and honor the collective bargaining agreement until its expiration date.

These considerations must be made a part of this bill to privatize state liquor stores to protect both the employees and the taxpaying public.

#1
2/16/89
NB 627

THE REALITIES OF ESTABLISHING A 'PACKAGE STORE' UNDER HB 627...
NOT FOR THE COMMON PERSON

For the purpose of this example, I have chosen to buy out a state store in Helena, Liquor Store #1, on 118 Helena Avenue.

The following is a calculation just to buy this package store:

Purchase of current inventory in existing state store the minimum bid of 80% of the retail value	\$155,000.00
Lease for first and last month	7,046.00
Furniture and fixtures	2,000.00
Insurance for first 6 months	1,750.00
Retail package store license	15,000.00
Liquor liability insurance (carrier will want full year payment upfront)	5,000.00
TOTAL	185,796.00

Just to open the doors, I need almost \$186,000. This excludes operating capital for the first month of business. This is not an option for the common person like myself.

If the tavern across the street wants to expand its retail off-premise sales, it would merely cost them \$400 for a warehouse endorsement fee. Then they can begin to sell liquor at the same price or lower than I could afford.

The difference in cost between purchasing a package store and expanding tavern sales is \$185,396. Based on this difference, my package store would be at a significant disadvantage competitively.

4
NIB 626
2/16/89

MONTANA SHOULD CONTROL LIQUOR SALES

Governor Stan Stephens while campaigning around our state said we should have less government and he would look at privatizing some of the areas where it would be a benefit to the people of Montana and save us all some taxes. Governor Stephens is now backing a bill introduced for the umpteenth time by Billings' own Representative Bruce Simon.

Representative Simon's proposal to take Montana out of the retail liquor business in the 1985 legislature received support from only 20 legislators and his similar proposal in the 1987 session was defeated 62 to 32.

Why, you ask, would our legislators vote against a bill that would save the taxpayers large amounts of tax bucks that go to unproductive state liquor employees and greedy landlords and administrators that just sit in Helena and do nothing?

Why do we vote for and support these numskull candidates to represent us in Helena?

In reality, we do not. Our competent legislators voted against Representative Simon's bill because it was the right thing to do. Our good legislators know that alcohol is an addictive drug--one that is legal. This drug costs the state of Montana millions of tax dollars in trying to control and correct the social and criminal problems caused by the consumption and addiction of alcohol. A person that says DUI laws should be even tougher but thinks the state liquor stores should be turned over to private entrepreneurs is talking out of both sides of his/her mouth. Will private enterprise pay for these ills by their profit? I think not.

Representative Simon says the state liquor business is sick and getting sicker. Let's look at other reasons the majority of our legislators continue to vote to keep the control of liquor sales in the hands of the state.

First of all, state liquor stores are the best means to ensure responsible sales of liquor. Clerks in the state stores have a duty to their employer, the state, to see that liquor is not sold to minors.

As for the myth that big tax bucks support the retail liquor outlets, nothing could be further from the truth. In fiscal year 1988 the bottom line net profit from the Liquor Enterprise Fund that went into the State General Fund was over 3.7 million dollars. This figure does not include liquor taxes or licensing fees. At the same time, expenses to run the state stores decreased 7% from 1987 to 1988 fiscal years. Although sales were down in 1988 compared to 1987, profit as a percent of net sales increased from 10.66% in fiscal 1987 to 11.05% in 1988.

If you are like me and profit and loss statements boggle your mind, let's look at it another way. At the Billings South 27th Street state liquor store for every hour a clerk works, \$23.20 of net profit goes into the State General Fund. (This does not include taxes.) Why, the state retail liquor division is so sick that most private businesses would give their eyeteeth for it!

Why, then you ask, does Representative Simon and Governor Stephens advocate to turn over the profits from liquor sales to private business?

Greed is the only answer. Private business would sell liquor 365 days a year from 8 am to 2 am. They would advertise it as the best thing since oat bran and have enticing sales to lure customers in. They would most likely pay poverty wages without decent benefits to their workers.

Is this what the majority of Montanans want?

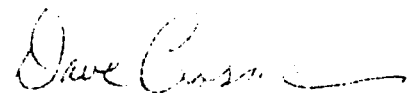
Currently the state operates 130 liquor stores, 90 of which are agency stores run by private individuals who have a contract with the state. The other 40 are state employee-operated stores. State law now says if a state employee-operated store drops below 10% profit for 12 consecutive months they may convert the store to an agency store. In other words, under the current system the state has the best of both worlds. If profits are good the state can continue to operate the stores but if sales and consumption go down with the effect of profits dropping below 10%, the state can shift the overhead to an agent and still put profit in the general fund while maintaining its control.

Besides, what about our state's commitments and its moral obligation to its employees and the private agents?

It is not funny that Simon's and other bills to privatize do not address these human issues.

I say our state representatives have done the right thing in the past by keeping state control of liquor sales. They know that in every state that went private the consumption of this legalized drug increased.

I thank those responsible legislators who voted not to privatize the state liquor stores. It is representatives that vote in favor of the citizens' welfare rather than the almighty profit for a few that deserve our support. I think we should all say to those who voted to keep state control "Keep up the good work!".



Dave Crosner
1325 Florian Avenue
Huntley, MT 59033

WITNESS SHEET - For HB-627

NAME	ORGANIZATION	For	Against
Phil Stepp	Mont Tavern Ass.	as amended	
Wayne Phillips	Gov's Office	✓	
Gary A Kolt	Gandy's Reno Inn	✓	
Stacy Bush	Gallatin Gateway, Mont	✓	
Bob Fletcher	Gallatin Co. TAVERN ASSN	✓	
Charles R. Brooks	Montana Retail Association	✓	
MICHAEL P. CETRARO	GALLATIN CO. TAVERN ASSC.	✓	
Lee STEFFANICH	Yellowstone TAO ASSC	✓	
Rich Blair	Reno Club Billings	✓	
Rae Lee Dulack	Silver Saddle Basin	✓	
Ruth Larson	Mont. Tavern Assn	✓	
Wen Larson	Mont. Tavern Assn	✓	
Chas E Durkee	" " "	✓	
Bob Durkee	" MTA "	X	
Tom Lohman	Dillon MT	✓	
Ray Meddel	Great Falls MT		✓
John Hewitt	Missoula MT		✓
Jane Cross	UFCW Bly		✓
Earl But	UFCW Butte		✓
Tom Crane	UFCW Great Falls		✓
Jim Murry	Mont. State AFL-40		✓
CHARLIE DELANEY	DELANEY'S VA UICCA COR: PIZZA	✓	
Jim BERGSTROM	OFFICE 324 MOORE MTA.	✓	
John E. JACKSON	Butte, MT.	✓	
LISA Blanford	Leg. Auditors Office		
Don Inghels	MT Chamber of Commerce	X	
Amesill Kall	Flight 100+		

Name

Organization

FOR
Amended

Agg

Bob Hemm - Winey Spindles/HAF

Sandy Keith - Red Rooster Butte

Michael Lemm - Liqueur Rep

Mary Schuler - State employee

Maria Klare - State employee

DEVIN OLSON - SMITH'S PLACE F. HEUGIA

Tim DALIN - Hollywood video

Bob Heiser - UFCW

X

X

X

X

X

X

X

X

VISITORS' REGISTER

Business

COMMITTEE

BILL NO.

627

DATE _____

2/16/89

SPONSOR

Simon

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

BUSINESS

COMMITTEE

437, 438,617~~617~~

BILL NO.

696

DATE

2/16/89

SPONSOR

GouldKadesWhalenPlease print
bill number.
Honor

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Marlene Teague	Helena		X
Chuck WALK	HELENA Mt. New Assn		X 696
Alexander Kaufman			
Mike Foster	See Enterprises		696
Pack Ringling	NAPP	617	6
Rick Fink	Montana Chamber		696
Jim Crane	Helena R		696
Dennis McCorn	Billings	617	
Richard C Parks	Gardiner & WPRC	617	
James Clough	Great Falls	437, 438	
Raymond Gowen	Great Falls	437, 438	
MARTIN LYNN	BOZEMAN	437, 438	
Cleveland C. Smith	Helena	437, 438	
Lynn Robson	Bozeman	617	
Nancy Aruffini	Montana F's Lobby	617	
J. KELBLE	NAPP	617	
Virginia Ferguson	MLIC	617	
Glenn H. Lodge	MSLA, MI	437 438	
David Huebner	Great Falls	437 438	

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VISITORS' REGISTER

Business

COMMITTEE

BILL NO.

617

DATE _____

2/16/89

SPONSOR

Kaddis

[illegible]

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VISITORS' REGISTER

Business

COMMITTEE

BILL NO. 437, 438, 696, 617DATE 2/16/89SPONSOR Gould, Gould, Whelan, Xadras

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Timi Ahrens	HELENA	438	
Mama Jansson.	W. WE INSTITUTE	627	
Mama Jansson	MT Chapter P.T. Assoc.	437	
Scott De Mars	Billings	437, 438	
Rick Tucker	Mont Pediatric Assoc	437, 438	
Jerome Loenhardt	Helena	438	
Don Shurt	Missoula ^{Mont Peoples Action}	617	
Kathy Peschel	MPA Missoula	617	
Tom and Beth Phillips	MPA Missoula	617	
Jacqueline Lockey	MPA Missoula Mt	617	
Julie Kulest	MPA 208 E Main	617	
Deb Hemmings	MPA	617	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.



JAMES W. MURRY
EXECUTIVE SECRETARY

110 WEST 13TH STREET
P.O. BOX 1176
HELENA, MONTANA 59624

(406) 442-1708

#3
2/16/89
HB 627

Testimony of Jim Murry before the House Business and Economic Development Committee on House Bill 627, February 16, 1989

Mr. Chairman and members of the Committee, for the record, I am Jim Murry, Executive Secretary of the Montana State AFL-CIO. We are here today to oppose House Bill 627 which would take the State of Montana out of the retail liquor and table wine sale business.

We oppose this bill because it is simply bad public policy for our state in many respects. First, in this administration's headlong rush toward privatization, many important policy questions are being ignored. The retail liquor sales for the state contribute substantially to our state's revenues -- \$4 million per year. How are you going to replace this revenue?

We do not believe that our schools, the elderly, public employees, the handicapped and the many others who need the state's assistance can afford a "let's do it now, and worry about revenues later" approach. We have to be realistic about state revenues, and state retail liquor sales are a \$4 million annual contributor to the fiscal health of Montana's state budget.

Secondly, you should consider the effects of this move on the state employees who work in state liquor stores. What of their futures? Their livelihoods? The future of their jobs and their families? Most of these working men and women have excellent job records for the state. Will you simply dismiss them and their records in the rush toward privatization? These men and women are trained professionals, working for decent salaries who will now be at the mercy of another service industry with a history of paying their employees minimum wage and no benefits.

And what effect will this action have on the other state employees who fear that their jobs may soon disappear? Do you intend to offer job and salary protections to the workers who are displaced by privatization? What about retraining and job placement? These employees and their job records deserve some recognition by the state, but there are none contained in House Bill 627.

Finally, you should ask yourselves why the state has been in the liquor business all of these years. The citizens of our state felt that liquor sales should be controlled because of the dangers of its misuse and abuse. Those dangers still exist today. In the fiercely competitive market which this bill would create, how conscientious will the package store operators be over sales to minors or to intoxicated drivers?

TESTIMONY OF JIM MURRY, PAGE TWO
FEBRUARY 16, 1989
HOUSE BILL 627

This legislation will make liquor more readily available for abuse and misuse because of increased hours of operation. And what of the effects on our neighborhoods and downtown areas? Existing state liquor stores must meet strict standards for cleanliness and respectability. Many of you have seen the neon signs and general seedy atmosphere exuded by private liquor stores in other states. Is this what we really want for Montana?

We maintain that the answer to that question is no. The state retail liquor stores work in our state today. They contribute to our state financially and ethically. We strongly urge you to give House Bill 627 an adverse committee report.

Thank you.