MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: By Chairman Tom Hager, on February 17, 1989, at 1:00 p.m. in Room 330, State Capitol.

ROLL CALL

Members Present: Senators Tom Hager, Chairman; Tom Rasmussen, Vice Chairman; J. D. Lynch, Matt Himsl, Bill Norman, Harry H. McLane, Bob Pipinich

Members Excused: None

Members Absent: None

Staff Present: Tom Gomez, Legislative Council
Dorothy Quinn, Committee Secretary

Announcements/Discussion: None

HEARING ON SENATE BILL 442

Presentation and Opening Statement by Sponsor: Senator J. D. Lynch, Senate District #34, advised that he was the chief sponsor of SB 442, which authorizes emergency detainment of a person who is suspected of having communicable tuberculosis and who is likely to leave the jurisdiction to avoid a hearing on commitment and treatment.

List of Testifying Proponents and What Group they Represent:

Judith Gedrose, Department of Health and Environmental Sciences

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Judith Gedrose, DHES, stated that essentially the bill asked for removal of the three-day waiting period in the hearing process to detain someone for tuberculosis diagnosis and treatment. She supplied written testimony supporting their view (Exhibit #1).

Questions From Committee Members: None

Closing by Sponsor: Senator Lynch closed without further comments.

DISPOSITION OF SENATE BILL 442

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Lynch moved that SENATE BILL 442 DO PASS. Senators in favor, 7; opposed, 0.

HEARING ON SENATE BILL 426

Presentation and Opening Statement by Sponsor: Senator Tom Rasmussen, Senate District #22, advised that he is the sponsor of SB 426 which revises the Montana Clean Indoor Air Act to allow the proprietor or manager of a public place to designate the entire area as a non-smoking area if they so choose.

List of Testifying Proponents and What Group they Represent:

Robert W. Moon, Montana Department of Health, and Montana Public Health Association
Toni Jensen, Rocky Mountain Tobacco Challenge
Dr. Karen Landers, Self, Helena
Darlene Miller, Self
Robert Johnson, Lewis and Clark County Health Department
Karen Malisani, Cancer Society
Doug Brown, American Lung Association
Peter Van Nice, Self
Jerome Anderson, Tobacco Institute
Jim Leiter, Health Department
Tom Maddox, Montana Association of Tobacco Distributors
Annie Bartos, Attorney, Montana Lung Association
Thomas E. Heyes, U. S. Postal Service, supplied written testimony (Exhibit #21)
Earl Dorsey, Postmaster, Helena, supplied written testimony (Exhibit #22)

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Robert W. Moon said he spoke in favor of SB 426 representing a public health agency and a public health association whose mission it is to help improve and protect the health of the people. He advised that cigarette smoking is responsible for more than one in every six deaths in Montana, and causes much human suffering. Smoking remains the single most preventable cause of death, and use of smokeless tobacco can cause cancer in humans, according to Mr. Moon. The proposed amendment would clarify the legality of the issue of keeping an area smoke free. He also stated Montana could benefit in terms of revenue through reduction in health care costs. He stated the State of Montana, through assistance from federal sources, is spending approximately $68,000,000 to treat smokers. However he stated health, not money, motivates the call for the reduction of tobacco use in SB 426.

Toni Jensen, stated she is Coordinator of the Rocky Mountain Tobacco Free Challenge, a federally funded program operated by the State Department of Health and Environmental Sciences. She said she spoke on behalf of SB 426 since involuntary smoke is extremely dangerous to non-smokers in a number of ways, and setting limits for smoking in the work place is important. She believes this bill provides for a minor change in the Montana Clean Indoor Air Act and gives freedom of choice. She provided the committee with her written testimony (Exhibit #3).

Dr. Karen Landers advised that she is a pediatrician from Helena representing herself. As a pediatrician, her primary focus is prevention of disease, and she spoke in favor of SB 426 which allows an entire public place to be designated as non-smoking by the proprietor or manager. Evidence suggests that passive smoke is not without effects. She urged the committee to give SB 426 a favorable recommendation. (Exhibit #4)

Darlene Miller stated she represented herself and wished to express her support for the proposed revisions to the Clean Indoor Air Act. With the enactment of these revisions policy development can be more definitive for the protection against the exposure to tobacco smoke. She believes it is important for the proprietor or manager to have the right to prohibit smoking in an entire area. She encouraged passage of the proposed changes.

Robert Johnson of the Lewis and Clark County Health Department stated that his department strongly supports

passage of SB 426.

Karen Malisani stated she is a volunteer for the American Cancer Society. She provided an information booklet for the committee's attention (Exhibit #2).

Doug Brown, American Lung Association, stated he fully supports SB 426 amending the Montana Clean Indoor Air Act. He stated he feels the proprietor or manager of a public place should have the option of protecting the air quality of the entire establishment. He stated they receive many calls at the Lung Association asking how this may be done presently within the law. He requested a favorable recommendation on SB 426.

Peter Van Nice stated he is representing himself and is also speaking as an employer who is looking at changing the Indoor Air Act. He believes SB 426 clarifies the management position, and he urged passage of the bill.

Jerome Anderson, representing the Tobacco Institute, advised that this organization is funded by manufacturers and distributors of tobacco products across the United States. He stated they support this legislation on two grounds (1) the present statute allows the proprietor to do exactly what this bill suggests, and (2) because the statute in either form would promote freedom of choice, which is a freedom his group espouses in all programs and endeavors in the United States.

Jim Leiter, Chairman of a group called GUESS which is composed of 53 employees of the State Department of Health and Environmental Sciences, stated he is a proponent of SB 426, and they would like to see their agency vehicle be able to set a standard for the rest of Montana.

Tom Maddox of the Montana Association of Tobacco Distributors stated his position was basically to present written material and appear as a friend of the Committee. He submitted his written testimony (Exhibit #5).

Annie Bartos, Attorney, and member of the Board of Directors for the Montana Lung Association, stated the Lung Association exists for the prevention and control of chronic lung disease. For this reason they request that SB 426 do pass.

Persons who submitted written testimony in support of SB 426 but did not testify are as follows:

Mary Kay Hansen, R.N., Chairman, Rocky Mountain States Tobacco Free Challenge (Exhibit #6)
John R. Burgess, M.D., Rocky Mountain States Tobacco Free Challenge (Exhibit #7)
Donald Espelin, M.D., Chief, Preventive Health Services Bureau of the DHES (Exhibit #8)

Questions From Committee Members: Senator Pipinich asked Robert Moon where any lost revenue caused by passage of this bill would be picked up. Mr. Moon believed any loss of revenue in that area would be offset by savings in health care services.

Closing by Sponsor: Senator Rasmussen stated that he believed the case had been well presented, and with that he would close.

DISPOSITION OF SENATE BILL 426

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Rasmussen made a motion that SENATE BILL 426 DO PASS. Senators in favor, 7; opposed, 0.

HEARING ON SENATE BILL 454

Presentation and Opening Statement by Sponsor: Senator Mike Walker, Senate District #20, stated that SB 454 is a notification type bill dealing with personnel who are exposed to infectious diseases during transport of patients to health care facilities. The bill provides that emergency service providers exposed to infectious disease would be notified of measures necessary to prevent or control spread of the disease.

List of Testifying Proponents and What Group they Represent:

Drew Dawson, Emergency Medical Services Bureau, Montana Department of Health and Environmental Sciences
Rick Bandy, President, Montana EMS Association
Kathleen Cornelius, Fallon County Ambulance Service
Richard Seddon, Montana State Firemen's Association
Tim Bergstrom, Billings Fire Fighters Union
Art Bicsak, Montana Private Ambulance Providers
Bill Weber, Belgrade Fire Department, Halls Emergency Ambulance Service
Gary Haigh, Region 1B, EMS

Lyle Nagel, Montana State Volunteer Firefighters

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Drew Dawson stated that this bill is presented as a recommendation of the Emergency Medical Services Advisory Council. He read and submitted his written testimony to the committee (Exhibit #9).

Rick Bandy advised that the Emergency Medical Services strongly urges the committee to support SB 454 to protect volunteers that are working in their communities.

Kathleen Cornelius, EMT, and director of the Fallon County Ambulance Service, stated that for the reasons previously presented she would urge support of SB 454.

Richard Sedden, Secretary-Treasurer of the Montana State Firemen's Association, advised that his organization would like to go on record as being in support of SB 454.

Tim Bergstrom stated he was speaking on behalf of the Billings Firefighters. He advised that they respond to approximately 3,000 emergency calls a year, of which 60% are of the emergency-medical variety. He strongly recommended that SB 454 be passed.

Art Bicsak, representing Montana Private Ambulance Operators, stated that group urges passage of SB 454.

Bill Weber, City of Belgrade Fire Marshall, and ambulance attendant for Hall's Emergency of Bozeman, stated he strongly recommended that the committee pass SB 454.

Gary Haigh, representing EMS Region 1B, which consists of representatives from Ennis, Deer Lodge, Anaconda, Butte and Ruby Valley, stated they urge support of this bill.

Lyle Nagel, State Volunteer Firefighters Association, advised that in many cases their personnel are the first on the scene, and he urged that the committee pass this bill.

Questions From Committee Members: Senator Himsl asked who would pay for the cost of the testing and determination

of the infectious disease. Mr. Dawson advised that this bill does not mandate a test at the hospital for the individual. He stated if it is determined in the course of treatment at a hospital that a person does have one of the infectious diseases, then the pre-hospital people would be notified. The only cost involved would be the notification by the hospital to the emergency services people.

Closing by Sponsor: Senator Walker stated the bill is not the most complete bill because it does not mandate testing. However, it is a measure whereby faster notification can be made if the injured person is determined to have an infectious disease.

DISPOSITION OF SENATE BILL 454

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Himsl moved that SENATE BILL 454 DO PASS. Senators in favor, 7; opposed 0.

HEARING ON SENATE JOINT RESOLUTION 14

Presentation and Opening Statement by Sponsor: Senator Tom Hager, Senate District #48, informed that this is a committee resolution requested by a group known as the Montana Community Foundation. He turned the floor over to John Delano.

List of Testifying Proponents and What Group They Represent:

John Delano, Montana Community Foundation

List of Testifying Opponents and What Group They Represent:

None

Testimony:

John Delano stated he represented the Montana Community Foundation, which presented their resolution to the committee at a previous hearing. He stated the Foundation is a state-wide organization which is attempting to raise money for philanthropy around the state. He stated they have received a $1,500,000 grant from the McKnight Foundation of St. Paul, and also a grant from the Great Northern Foundation, which gets them off to a good start. They believed a little

"push" from the Legislature would help them along.

Questions From Committee Members: None

Closing by Sponsor: Senator Hager had no further closing remarks.

DISPOSITION OF SENATE JOINT RESOLUTION 14

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Himsl made a motion that SENATE JOINT RESOLUTION 14 DO PASS. Senators in favor, 7; opposed 0.

HEARING ON SENATE BILL 407

Presentation and Opening Statement by Sponsor: Senator Hager advised that Senator Judy Jacobson, chief sponsor of SB 407, was not present to provide her opening statement.

List of Testifying Proponents and What Group they Represent:

Drew Dawson, Chief, Emergency Medical Services Bureau, Montana Department of Health and Environmental Sciences
Rick Bandy, President, Montana Emergency Medical Services Association
Jack McMahon, M.D., Chairman of Montana Medical Association Legislative Committee
Sharon Dieziger, Montana Nurses Association
Richard Seddon, Montana State Firemen's Association
Art Bicsak, Montana Private Ambulance Operators
Bill Weber, Fire Marshal, City of Belgrade
Gary Haigh, EMT, EMS Region 1B
Beverly Clagett, Missoula Community Transport Service
Lyle Nagel, Montana State Volunteer Firefighters
Owen Warren, American Association of Retired Persons
Kathleen Cornelius, Fallon County Ambulance Association
John Semple, Montana Aviation Trades Association

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Drew Dawson stated he is Chief of the Emergency Medical

Services Bureau in the DHES, and was pleased to testify as a proponent of SB 407, which was introduced at the request of the department. He read and submitted his written testimony to the committee (Exhibit #10).

Rick Bandy, President of the Montana Emergency Medical Services Association, stated this group is a professional organization that represents EMTs who serve on ambulance services, and they are the only organization which speaks on behalf of pre-hospital emergency care providers. He read and provided his written testimony to the committee (Exhibit #11). He urged a do pass recommendation on this bill.

Jack McMahon, a Helena surgeon, stated he is the Chairman of the Montana Medical Association Legislative Committee, and a member of the American College of Surgeons Committee on Trauma. All of these organizations strongly support SB 407. He stated they have one problem with the proposed amendment because it totally excludes all fixed-wing air ambulance services. He told of a rural situation where on a routine basis the hospital will be transporting patients that may need monitoring. If they were transported in a ground ambulance, that would be acceptable. However, if they put these patients in a local airplane without the necessary support, it is a different situation. The suggested amendments will address this concern.

Sharon Dieziger, representing the Montana Nurses Association, stated she is speaking in favor of SB 407. She stated the EMS Bureau has worked diligently through an advisory committee with broad representation to reach a compromise on this legislation. She believes this is the best attempt they have seen to provide better pre-hospital care. It should not financially impact either the rural or the metropolitan health care to a great extent. According to Ms. Dieziger, there is no question that the ambulance laws must be updated. As a Director of the Mercy Flight Helicopter service and as a representative of Montana Nurses Association, she applauds all efforts towards licensure and standards of these services, and would support the recommendations and amendments proposed by Dr. McMahon.

Richard Seddon, Secretary-Treasurer of the Montana Firemen's Association, stated he was also a member of the advisory committee which drew up this plan. He stated he is an 18-year member of the Kalispell Fire Department, and added that the EMS committee, the Fire Department, and the Montana State Firemen's Association would like to go on record as being in favor of this

bill.

Art Bicsak stated he is president of Bicsak Ambulance of Great Falls and is representing the Montana Private Ambulance Operators. He stated his organization transports over 80% of the total number of patients transported in Montana. He urged that the committee pass SB 407.

Bill Weber stated he represents a number of different facets from EMS. He stated he is chief of the Rae Volunteer Fire Company which provides quick response unit activities west of Bozeman; Fire Marshal of the city of Belgrade, and also an ambulance attendant for Hall's Emergency in Bozeman. He stated he is an EMT and he responds to 500 calls per year. He told of a small, fly-by-night company which claimed to be a representative in numerous states. They obtained a Montana ambulance license and also had a temporary FCC license that had been obtained by questionable means. The company had numerous complaints against them about the quality of patient care; however, there was no means to address these under current Montana law. Ultimately the EMS Bureau was unable to help in this problem since their criteria allowed for what they were doing. The new presentation of SB 407 would help alleviate this problem. He stated that by allowing the EMS Bureau to administer the emergency services in Montana through rule making, EMS in Montana will improve. He stated in their case they are looking at medical intervention and they must have the ability to provide definitive measures within that time period. This regulation will allow that. He urged that the committee members support this bill.

Gary Haigh stated he is an EMT from Ennis and EMS Region 1B strongly supports SB 407. He read and submitted his written testimony to the committee (Exhibit #12).

Beverly Clagett advised that she is a nurse at Missoula Community Medical Center. She stated that the need of air ambulance service has developed and they see the need currently for recognition of air ambulance regulation to safeguard the public. She stated they hope SB 407 will establish these guidelines so the program can continue to exist.

Lyle Nagel, Secretary-Treasurer of the State Volunteer Firefighters Association, and also a member of the Emergency Medical Quick Response Unit, stated he sees some problems arising since the Quick Response came into existence. The regulation portion of this bill

would help alleviate some of these problems, in Mr. Nagel's opinion. He submitted written testimony, and urged support of SB 407. (Exhibit #14)

Owen Warren, American Association of Retired Persons, stated that the Legislative Committee of AARP supports SB 407. He read and submitted his written testimony to the committee (Exhibit #13).

Kathleen Cornelius, an EMT from Baker, and director of the Fallon County Ambulance Association, stated she wanted to emphasize the position of rural support for this bill. The bill would provide the department with the capability and flexibility in making regulations. According to Ms. Cornelius, this bill also addresses registration of different levels of services to guarantee to the public that there is some kind of accountability. She believes this bill would help provide the best pre-hospital care possible, and she recommends passage of SB 407.

John Semple, Montana Aviation Trades Association, stated he would be happy to answer any questions regarding air transportation services.

Questions from Committee Members:

Senator Himsl asked Senator Jacobson if she agreed with the amendments suggested by Dr. McMahon. She stated that those were the amendments which she proposed, and Dr. McMahon suggested adding a sentence. She stated they have been negotiating for some time with people who transport by fixed wing aircraft, and if this amendment would make those negotiations fall apart, she would not support it. John Semple stated that they are basically a charter air transportation service and the people belonging to his organization do not feel they need to be regulated since they do not consider themselves life support air ambulance systems. Senator Jacobson stated she would prefer to leave the amendments as they are.

Senator Himsl asked if the criminal penalty has ever been exercised. Drew Dawson stated as far as he knows it have never been exercised. In regard to a fiscal note, Mr. Dawson stated none has been requested. No additional costs are indicated.

Senator Norman asked why this must be on passage and approval. In reply, Mr. Dawson advised the rule making process is on passage and approval so work could begin on the rules right away. However, the effective date of the requirements will be January 1, 1990.

Closing by Sponsor: Senator Judy Jacobson stated that they have been working with a committee for the last four years. She stated she would recommend the bill. She pointed out that there were no opponents today, and previously there were quite a few. She stated the amendment to the Statement of Intent has to do with the sunrise provision. She wished to clarify that they are not licensing people, so they do not feel that there is a problem there. She believes the other amendments are necessary.

DISPOSITION OF SENATE BILL 407

Discussion: Senators Hager and Jacobson briefly explained the purpose and intent of the amendments.

Amendments and Votes: Senator Norman made a motion that THE AMENDMENTS BE ADOPTED. Senators in favor, 7; opposed,0.

Recommendation and Vote: Senator Himsl made a motion that SENATE BILL 407 DO PASS AS AMENDED. Senators in favor, 7; opposed, 0.

HEARING ON SENATE BILL 437

Presentation and Opening Statement by Sponsor: Senator Bill Norman, Senate District #28, advised that this is a bill relating to aids, which is an infectious disease. However, he stated there is much more involved - money, social aspects, moral aspects, emotion, prejudice and ignorance. He stated this bill does two things (1) it relates to HIV testing, and also (2) relates to confidentiality. Medical personnel on all levels are involved in this issue, as are insurance companies, public agencies, courts and patients who may be adults or infants. He stated there are extensive amendments, and he gave a hypothetical example of the various situations that could be encountered.

List of Testifying Proponents and What Group they Represent:

Jack McMahon, M.D., Chairman, Montana Medical Association Legislative Committee
Ellen Leahy, Acting Health Officer, Missoula Health Department
John Ortwein, Montana Catholic Conference
Neil Egan, Helena Aids Support Network
Linda Henderson, R.N., Montana Nurses' Association

Bob Johnson, President, Montana Health Association
Mary Beth Frederes, Montana Aids Coalition
Tom Hopgood, Health Insurance Companies of America
Bonnie Leifer, Missoula Aids Council
Tim Harris, Self
Woody Wright, Self
Brenda Nordlund, Montana Women's Lobby
Brenda Desmond, Self
Larry Akey, Montana Health Network, Montana Association of Life Underwriters
Joanne Scherer, Self
Bill McDonald, Missoula City-County Board of Health, submitted written testimony (Exhibit #23)
Julie A. H. Beckel, R.N., CEAP, submitted written testimony (Exhibit #24)
Anne M. Murphy, M.D., Western Montana Clinic, submitted written testimony (Exhibit #25)

List of Testifying Opponents and What Group They Represent:

Roger Tippy, Montana Dental Association
Bryan Asay, Montana Family Coalition
Rose Hughes, Montana Health Association
Patty Carrell, Pro-Family Women's Lobby, submitted written testimony (Exhibit #26)

Testimony:

Dr. Jack McMahon advised that his group supports this bill as amended since they think the bill does everything that should and can be done at this time. He urged that it be given a do pass as amended recommendation by the committee.

Ellen Leahy stated she is testifying in support of SB 437, including amendments. She read and submitted her written testimony to the committee (Exhibit #15).

John Ortwein, of the Montana Catholic Conference, urged the committee's support of SB 437. He read and furnished his written testimony to the committee (Exhibit #16).

Neil Egan stated he represented the Helena Aids Support Network which is a diverse group of volunteers working with persons who are HIV positive, their families and loved ones. He stated their group wholeheartedly supports SB 437.

Linda Henderson, R.N., stated she represents the Montana Nurses Association, and is speaking in support of SB 437, with amendments. She stated that counseling with testing is the only means available to control spread

of the HIV virus. The MNA believes this legislation is necessary, and it would help provide the knowledge people need to protect themselves. She urged support of SB 437.

Bob Johnson, President of Montana Health Association, stated they are in support of this bill, with amendments. He stated it represents hundreds of hours of meetings and many compromises before it reached its final form. He stated there is broad based support, and his association urges passage of SB 437.

Mary Beth Frederes, Montana Aids Coalition, stated theirs is an organization made up of individuals from across the state. The Coalition supports this bill. She stated that information is the only weapon, and every opportunity to present the message must be taken, and people encouraged to use preventive measures and testing. She urged passage of this bill.

Tom Hopgood, Health Insurance Companies of America, stated he is a proponent of SB 437. He stated he would like to study the amendments, and may have a further suggestion at the Executive Session.

Bonnie Leifer, Coordinator of the Missoula Aids Council, stated she is in support of this bill.

Tim Harris, Montana Independent Living Project, stated he works with people who have need for counseling and confidentiality. He said he very strongly supports those portions of the bill.

Woody Wright stated he is appearing as a parent and urged support of SB 437. He stated he is not sure that is all that is needed, but it will be a benefit. He stated he supported the amendments as well.

Brenda Nordlund, Montana Women's Lobby, stated that agreement had been reached on the amendments. She reviewed and explained each amendment, which are attached. (Exhibit #17). She urged the committee's support.

Brenda Desmond stated she teaches at Montana University Law School but she is representing herself. She urged passage of SB 437.

Larry Akey, representing Montana Association of Life Underwriters and Montana Health Network, advised that with the amendments as proposed they believe a workable bill is in sight. However, they still have some

concerns. They recognize the importance of aids education and urged the committee to keep this bill alive as a vehicle to future compromise.

Joanne Shearer, a Helena homemaker who is representing herself, stated she is also a member of the Aids Task Force. She stated she has not had time to review the amendments. She had planned to oppose the bill and her prepared testimony was in opposition. However, with the amendments she feels she could support the bill, although she has some concerns. She advised the Informed Consent Law in Illinois has been struck down because it did not serve anyone's best interest and actually impeded the physician, and Florida is considering doing likewise. According to Ms. Shearer, these two states are among the highest in number of aids cases. Another area of concern regards who needs to be informed. It lists the subject's spouse but does not address a live-in lover or anyone known to be sexually intimate with the person identified as positive. She feels that should be addressed. She mentioned the recent Rock Hudson case where there was a multi-million dollar award involved and she believes that case will set a precedent that people who have diseases such as aids are under moral and legal obligation to reveal the nature of contact. She believes such persons should be informed that they could be sued if they do not reveal names of their contacts. She does not believe that this legislation addresses who should be tested and what the mandate should be in identifying those people that are high risk. She presented her written testimony which sets forth further concerns and suggestions for addressing them. (Exhibit #18)

Roger Tippy, representing the Montana Dental Association, stated that he is opposed to two and one-half sections of the bill. Approximately 450 dentists of this state and their auxiliary personnel come into contact with human bodily fluids, mainly saliva but sometimes blood, more frequently than most health professionals that operate outside a hospital. They are keenly interested in aids legislation of this nature. He stated that Mr. Johnson said there had been a great deal of outreach and discussion, but he believed the Dental Association was overlooked. The concern is that the confidentiality section does not appear to allow disclosure to another health care provider who is currently treating the individual as a patient. The Dentist is entitled as another provider under the Uniform Health Care Information Act. He stated he would submit written information on this issue which

was furnished by the American Dental Association. He read a portion of the information and submitted it to the committee. (Exhibit #19). He also proposed an amendment which would strike Sections 8 and 9 in their entirety, and portions of pages 8 and 9. He furnished the amendment to Tom Gomez.

Bryan Asay, Montana Family Coalition, stated he understands the amendments are very comprehensive but he had not had a chance to review them to see if they would address the concerns of the Coalition. He expressed concern that there is a prevalent attitude that this is a civil rights issue rather than a public health issue, and he asked the committee to treat it as a public health matter. He reiterated that because he did not know what the amendments provide, he is not sure if he is a proponent or an opponent. He submitted written testimony for the committee's consideration. (Exhibit #20).

Rose Hughes, Montana Health Care Association, stated that their concerns are basically the same as expressed by Roger Tippy of the Dental Association. They are concerned about treating health care information that has to do with aids differently from how you treat other health care information. When the Uniform Health Information Act was adopted, the object was to have a uniform way to deal with confidential medical information and medical records so that everyone would know to whom information could be released and under what circumstances. There were provisions under that act for releasing information to people who had a need to know who were providing services to a given patient. Her group believes the Uniform Health Information Act should not be put aside in this bill.

Questions from Committee Members:

Senator Rasmussen asked Senator Norman if aids is being treated differently, as the last two speakers indicated. Senator Norman responded by stating that it is being treated differently, but work is being done in the direction that aids will not be treated differently. However, he feels it will take time before this is realized.

Senator Rasmussen then asked if in the case of syphilis, others have to be informed, why does this bill change that for aids.

Senator Norman advised that there should be an understanding between the doctor and the patient before a test is

given what should be done with the information. He believes the bill is trying to provide informed consent.

Senator Rasmussen pointed out a section which states the provider shall encourage the subject to notify persons with whom they have been in contact. He asked if in the case of syphilis would the doctor just "encourage" or does the law say he must inform.

Dr. McMahon stated syphilis, as well as aids, is a reportable disease. Positive aids tests must be reported to the State Health Department. The Department then contacts that patient and they go through the process of identifying contacts. This is not peculiar to aids - every venereal disease is handled in this manner.

Ellen Leahy, Missoula Health Department, stated they always encourage the infected person to inform or give the department the names to inform. That language also comes from the Center of Disease Control. Dr. Rasmussen asked if she felt that language was strong enough to enable the health department to do that, and she stated that in all practicality they can do nothing more than "strongly encourage".

Closing by Sponsor: Senator Norman stated that Mr. Tippy will probably not be surprised to find that his amendments will not be considered at this time. However, they will be considered before the bill appears on the Senate floor, and if the matter is not resolved at that time, he could present them to the House. He stated that informed consent has been addressed and it is the intent of the bill and the amendments to treat this as any other reportable disease.

DISPOSITION OF SENATE BILL 437

Discussion: Senator Hager stated that one of the frustrations of Legislature is that some bill does have to be last. He stated much work went into this bill and there are many amendments to consider, and possibly more. It must be decided if this is a good enough package to send down the road. Senator Pipinich added that it is a start.

Amendments and Votes: Senator Norman made the motion that AMENDMENTS 1 THROUGH 13 BE ADOPTED. Senators in favor, 7; opposed, 0.

Recommendation and Vote: Senator Norman made the motion that SENATE BILL 437 DO PASS AS AMENDED. Senators in favor, 7; opposed, 0.

ADJOURNMENT

Adjournment At: 3:00 p.m.

SENATOR TOM HAGER, Chairman

TH/dq

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ROLL CALL

PUBLIC HEALTH COMMITTEE

51st LEGISLATIVE SESSION -- 1989 Date 2/17/89

NAME	PRESENT	ABSENT	EXCUSED
Sen. Tom Hager	X		
Sen. Tom Rasmussen	X		
Sen. Lynch	X		
Sen. Himsl	X		
Sen. Norman	X		
Sen. McLane	X		
Sen. Pipinich	X		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

February 17, 1989

MR. PRESIDENT:

We, your committee on Public Health, Welfare, and Safety, having had under consideration SB 442 (first reading copy -- white), respectfully report that SB 442 do pass.

DO PASS

Signed: _____

Thomas O. Hager, Chairman

scrsb442.217

2-15-89

SENATE STANDING COMMITTEE REPORT

February 17, 1989

MR. PRESIDENT:

We, your committee on Public Health, Welfare, and Safety, having had under consideration SB 426 (first reading copy -- white), respectfully report that SB 426 do pass.

DO PASS

Signed: _____

Thomas O. Hager, Chairman

2-15-89

SCRSB426.217

SENATE STANDING COMMITTEE REPORT

February 17, 1989

MR. PRESIDENT:

We, your committee on Public Health, Welfare, and Safety, having had under consideration SB 454 (first reading copy -- white), respectfully report that SB 454 do pass.

DO PASS

Signed: _____

Thomas O. Hager, Chairman

2-15-89

SCRSB454.217

SENATE STANDING COMMITTEE REPORT

February 17, 1989

MR. PRESIDENT:

We, your committee on Public Health, Welfare, and Safety, having had under consideration SJR 14 (first reading copy -- white), respectfully report that SJR 14 do pass.

DO PASS

Signed: _____

Thomas O. Hager, Chairman

2-15-89

SCRSJ014.217

SENATE STANDING COMMITTEE REPORT

February 17, 1989

MR. PRESIDENT:

We, your committee on Public Health, Welfare, and Safety, having had under consideration SB 407 (first reading copy -- white), respectfully report that SB 407 be amended and as so amended do pass:

1. Page 2, lines 9 through 10.
Following: "services" on line 9
Strike: remainder of line 9 through "units" on line 10
Insert: "such as fixed wing aircraft which provide life support services, including medical personnel and medical equipment; initial response rotary wing aircraft; and nontransporting medical units. The department shall exclude from regulation air transportation services such as charter or fixed based operators regulated by the Federal Aviation Administration that offer no special medical services or provide only transportation to patients or persons at the direction or under the supervision of an independent physician"

2. Page 4, line 19.
Following: line 18
Insert: "The term also does not include air transportation services such as charter or fixed based operators regulated by the Federal Aviation Administration that offer no special medical services or provide only transportation to patients or persons at the direction or under the supervision of an independent physician."

AND AS AMENDED DO PASS

Signed: Tom Hager
Thomas O. Hager, Chairman

2-15-89

scrsb407.217

SENATE STANDING COMMITTEE REPORT

February 17, 1989

MR. PRESIDENT:

We, your committee on Public Health, Welfare, and Safety, having had under consideration SB 437 (first reading copy -- white), respectfully report that SB 437 be amended and as so amended do pass:

(See attached)

AND AS AMENDED DO PASS

Signed: _____

Thomas O. Hager, Chairman

scrsb437.217

January 1989

MONTANA DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

TESTIMONY FOR CHANGES PROPOSED IN MCA 50-17-106

TUBERCULOSIS CONTROL

SB 442

SENATE HEALTH & WELFARE
EXHIBIT NO. #1
DATE 2/17/89
BILL NO. SB 442

Tuberculosis is a communicable disease and there are instances when persons need to be detained to prevent their spreading tuberculosis to the public. Provisions for such a detention have existed in the tuberculosis statute, Title 50, Chapter 17. Montana Department of Health and Environmental Sciences (MDHES) and local health departments have had some difficulty, however, in implementing this provision because of a step in the process. From the time of the summons for a person to appear for a hearing until the hearing can be held there must be a three-day waiting period. In the past couple of years, we have had approximately six instances per year where persons not complying with tuberculosis treatment have needed to be mandated to diagnosis and/or treatment. Several of them have been transients and have simply disappeared during that three-day waiting period. Although they have no identifiable Montana residence, we've come to learn that it's likely they will once again surface in Montana still having the untreated tuberculosis they had when they disappeared. Another concern in this issue is related to the person developing drug-resistance from sporadic treatment. Several of the cases to which I am referring are cases where drug resistance has formed. Tuberculosis treatment still requires a minimum of six months of uninterrupted therapy. If a person takes medication for one month, disappears for a month and continues a pattern such as that for any period of time, the organisms will soon become resistant to traditional tuberculosis treatment. There are several instances in the United States where people have developed organisms that are totally untreatable. It is our concern for these persons individually, but also for the public who then are at risk of contracting untreatable tuberculosis from persons who resist or sporadically take treatment.

Removal of the three-day waiting period in the hearing process to detain someone for tuberculosis diagnosis and treatment should ensure the public, persons with communicable tuberculosis and/or drug resistant organisms are not free to spread tuberculosis in their community.

JG/vg-103d

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NO
SMOKING

A Decision Maker's Guide to Reducing Smoking at the Worksite

Office of Disease Prevention and Health Promotion
and Office on Smoking and Health
Public Health Service
U.S. Department of Health and Human Services
1985

February, 1989

Testimony on Senate Bill 426

Mr. Chairman and members of this committee. I am Toni Jensen, Coordinator of the Rocky Mountain Tobacco Free Challenge, a federally funded program operated by the State Department of Health and Environmental Sciences. I am here today to speak on behalf of SB 426.

We have known for many years that involuntary smoke is extremely dangerous to nonsmokers in a number of ways. This is the reason we are so concerned about setting limits for smoking in the workplace.

The tobacco lobby would like you to believe that the tobacco issue has been sufficiently addressed--enough is enough--they continue to say. But I say that as long as there are people dying of lung cancer, dying of heart disease, dying of emphysema and other ~~smoking~~ tobacco related diseases--this issue will never die.

The tobacco lobby would also have you believe that we're not paying enough attention to smokers rights. Believe me, we pay a lot of attention to smokers--the cost to society of smoking related diseases is staggering. It is so ironic that the very people who are allies of the tobacco industry are the people most hurt by their products. As a result, we all have to suffer--the families, the co-workers, our overburdened health care system.

This bill provides for a minor change in the Montana Clean Indoor Act and gives what the tobacco lobby has been asking for--freedom of choice. Let employers and employees decide for

decide for themselves if they want a smoking policy. Let them designate a smoking area if they like, or as this bill states, give them the right to designate the entire area as smoke-free.

TESTIMONY FOR SENATE PUBLIC HEALTH WELFARE AND SAFETY COMMITTEE

Support SB 426 Allow proprietor to designate entire public place as nonsmoking area

Name: Karen Landers MD, Pediatrician from Helena

Representing: Self

As a pediatrician whose primary focus is the prevention of disease, I speak in favor of SB 426 which allows an entire public place to be designated as non-smoking by a proprietor or manager. Evidence suggests that passive smoke is not without effect. Despite clearly delineated smoking and non-smoking areas in public places, I have freqently found myself inhaling passive smoke. I would choose to patronize establishments which were entirely smoke-free were they available, and I think a proprietor or manager should have the option of doing so if he or she chooses. Please give SB 426 your do pass recommendation.

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

NAME: Tom Maddox DATE: Feb. 17, 1989

SENATE HEALTH & WELFARE
EXHIBIT NO. #5
DATE 2/17/89
BILL NO. SB 426

ADDRESS: P. O. Box 1 2 3, Helena MT 59624

PHONE: 442-1582

REPRESENTING WHOM? Montana Association of Tobacco and Candy Distributors, a nonprofit group of Montana family-owned small businesses.

APPEARING ON WHICH PROPOSAL: S B 4 2 6

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

COMMENT: I ask the committee to turn to Chapter 40 the Montana Clean Indoor Air Act, section 50 - 40 - 104 (1) (a). This is in SB426 page 1 lines 17 and 18. The present law reads in part that the man in charge of a public area which is enclosed shall if he wishes the entire area designated as a nonsmoking entire area post a sign stating this. It doesn't even state that more than one sign is needed.

SB426 then would add at the end of this list of subsections a, b and c a sub (d) — refer to SB426 page 1 line 25 and page 2 line 1 . This says what seems clear to be duplicating the same idea in other words.

It costs the tax payers somewhere in the area of about $700 for every bill in this session, and this appears to be a waste of the taxpayers money -

If on the other hand, this bill is intended to repeal 50-40-201 on state and local government buildings, then SB 426 is a backdoor approach.

The Montana family-owned independent small businesses distributing tobacco products ask that this committee recommend that SB426 DO NOT PASS.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE HEALTH & WELFARE
EXHIBIT NO. #6
DATE 2/17/89
BILL NO. SB 426

The Honorable Tom Hager, Chairman
Senate Public Health, Welfare
and Safety Committee

February 16, 1989

Mr. Chairman;

As Chairman of the Rocky Mountain States Tobacco Free Challenge and an Occupational Health Nurse, I am very much in favor of the Senate Bill #426 which would allow all businesses the opportunity to declare their entire areas "Smoke Free". There currently is no such provision in the Montana Clean Indoor Air Act causing confusion to many area businesses.

Many such businesses have already declared themselves "Smoke Free"in response to the many legal rulings which have been handed down regarding this subject (please see the attached). These same companies realize that it is <u>their duty as an employer</u>, to provide a safe and healthy working environment to their employees (common law responsibility) and feel that the only way to accomplish this is to provide totally smoke free areas. These companies are to be commended for their vision and should not live under a cloud waiting to be challenged on their smoking policy.

It is important to note that this only allows for the <u>option</u> and in no way limits the business to an unpopular policy.

This ambiguity has existed too long in the Montana Clean Indoor Air Act and it is time that this point was clarified, therefore, please accept this written testimony in <u>overwhelming support of Senate Bill #426</u>.

Thank you.

Mary Kay Hansen RN

Mary Kay Hansen, R.N.
Chairman- Rocky Mtn. States Tobacco Free Challenge

SB 126
#4

SOCIAL ISSUES

OFFICE SMOKERS FEEL THE HEAT

Prodded by court rulings, many companies are creating tobacco-free work areas.
The war between the smokers and the nonsmokers has invaded the corporation.

A few companies - including IBM, 3M, and AT&T - have already bowed to militant nonsmokers and ceded them their own territory in offices and factories: areas free from the blue haze of cigarettes, pipes, and cigars. Many other companies, prodded by court decisions and stepped-up campaigns by antismoking health groups, will be forced to face the issue, sooner rather than later.

Basically, employees who do not want to be irritated by coworkers' smoke insist that companies have a duty to provide work environments unpolluted by tobacco. A New Jersey court upheld that argument in 1976 in a landmark case against New Jersey Bell Telephone Co., but only recently has it become a general rule. Within the past three months, three other courts - including the prestigious U.S. Court of Appeals in San Francisco - have imposed on employers the obligation to take reasonable steps to separate smokers from nonsmokers.

All three cases involved employees acutely sensitive to tobacco smoke. But "as a practicle matter, it is going to be very, very hard to draw a line" between those who are physically unable to work in smoky rooms and those who simply do not like doing so, says Washington lawyer John Banzhaf III, executive director of Action on Smoking and Health. Because it would consume too much time and money to take each case to court, Banzhaf says, "we're going to have to adopt general guidelines." Litigation will serve as an "or else" for companies loath to establish guidelines.

BOLDER ELEVATOR RIDERS. Banzhaf's group has lots of company. The American Lung Assn. earlier this year sent all local sections a guide on how to persuade companies to create nonsmoking sections. The Group Against Smoking Pollution of Massachusetts (GASP), in Boston, averages more than five requests a day from callers who want help in setting up tobacco-free areas where they work. Across the continent, the Berkeley-based Californians for Nonsmokers' Rights logs the same number of inquiries daily. When the California group recently polled its members to set lobbying priorities for the coming year, fully one-thrid of the 12,000 respondents wrote in a request for a law segregating smoking in the workplace - even though the survey had not listed such a choice.

For their part, some companies have come to feel that they have a responsibility to accommodate nonsmoking employees. With only a third of most workers now smoking, "you don't want to tell your majority, 'Well, the heck with you,'" says Robert N. Beck, executive vice-president at Bank of American in San Francisco. Written guidelines are essential, Beck says, to instruct line managers on how to respond when nonsmokers ask for protection, and the bank is now formulating its policy.

Minnesota, the nation's leader in this area, has had a workplace smoking law since 1975. It bans smoking in any enclosed area "serving as a place of work" other than sections specially designated for smokers. The statute has so emboldened antismokers that it is not unheard of for an elevator passenger in a Minneapolis office building to pluck a cigarette out of the mouth of someone ignoring the rule.

THE 10-PERSON RULE. Responding to the Minnesota law and employee complaints, Control Data Corp. in 1979 adopted an eight-page policy outlining the rights of smokers and nonsmokers. It separates work areas into smoking and nonsmoking sections, with work stations shifted around so that each employee works in the section he or she prefers. Ventilation systems are designed to waft air currents away from nonsmoking areas.

Other companies get even more specific. In West Palm Beach, Fla., for instance, the Government Products Div. of Pratt and Whitney Aircraft of Canada Ltd., a subsidiary of United Technologies Corp., sets a minimum distance of 4 ft. between smoking and nonsmoking areas and directs that in the cafeteria and dining room, the "size of the smoking area will not exceed that of the non-smoking area." American Telephone & Telegraph Co. says that when more than 10 persons are in a meeting, the room should be divided into smoking and non-smoking areas; in smaller gatherings, anyone may veto all smoking.

There are obvious costs to segregating smokers, including having to build walls between smoking and nonsmoking areas and increasing ventilation. But the antismoking lobby counters with figures of its own. William L. Weis, associate professor of business administration at Seattle University, took into account everything from the increased productivity of nonsmokers who feel better in a smoke-free environment to the longer life of office furniture unmarred by smoke to calculate that such segregation will save $243 per year per smoker.

'I TOOK MY ASHTRAY HOME.' Actually, half of all U.S. companies have formal policies curbing smoking, according to a 1979 survey by the federal government. But almost all of these concentrate on blue-collar areas, where smoking either would be hazardous - for instance, because of the presence of flammable chemicals - or would risk contaminating the product. Only 12% provided non-smoking areas in their dining facilities.

SB406
#6

For companies fearful that smoking bans in white-collar areas may create employee controversy, Harold K. Haug, manager of human resources for the Minneapolis-based Physical Electronic Div. of Perkin-Elmer Corp., has a hopeful message. The division limited smoking to two employee lounges back in 1974, he recalls, and no one objected "because it was so uniform," and no one has had to be disciplined since. As for Haug, "I took my ashtray home, and that was it."

BUSINESS WEEK: November 29, 1982 Social Issues

AMERICAN LUNG ASSOCIATION OF MONTANA
825 Helena Avenue
Helena MT 59601 442-6556

928 Broadwater, Suite 221
Billings MT 59102 256-0635

SB426 #6

Economics and Court Decisions Leading to Smoke-Free Workplace

Research on secondary smoke exposure gives rational basis for no-smoking rules

Is nonsmoking on the way to becoming the norm in the workplace? Momentum created by the courts, by legislatures, by public opinion and by cold, hard economic fact is moving in that direction. A dramatic example of a trend is the smoking policy of Boeing Company, Seattle. It is now the goal of this major corporation, employing 84,000 workers in nine plants in the United States, to bar smoking in the workplace. Boeing has set no date for this bold move. A company spokesperson told me management is moving slowly so as not to be oppressive to smokers. But, he adds, all new employees are being told about the target of a smoke-free environment.

Meanwhile, the company is sponsoring smoking cessation classes for employees, formalizing no-smoking areas in the plants, and letting individual employees and groups establish no-smoking work stations on a voluntary basis.

This major corporation's policy reinforces a prediction I feel safe in making: nonsmoking will become a requirement for employment, for placement, for promotion. It could be the basis for termination, although the serious effects of deprivation of livelihood would make such a step a very last resort.

My commentary last Fall on legal developments pertaining to smoking in the workplace ("Clearing the Smoke Through Law, Courts", OH&S , Sept. 1983, p. 54) ended by noting that employers were in a different position in trying to bar smoking completely. They run the risk of being charged with unfair labor practices if they discriminate against smokers.

By Charles R. Goerth, Esq., *attorney, Dugan, Carey & Goerth Ltd., Wilmette, Ill.*

BASIS. But the courts have generally been willing to accept discriminatory practices in any situation if they have a rational basis. And the rational basis for prohibiting smoking is building as more and more studies show the adverse health impact and the economic ramifications of smoking by workers. Among the findings:

- Smokers have higher absentee rates than nonsmokers;
- Smoking-related illnesses lead to disability claims and death benefits.

The American Lung Association puts a price tag of $25 billion annually on lost productivity, lost wages and absenteeism. The ALA claims that more than 80 million workdays per year are lost due to smoking-related illnesses.

Nonsmoking will become a requirement for employment, promotion.

Accentuating the awareness of the hazard of cigarettes is the growing body of evidence showing that involuntary or passive smoking is having a previously unrecognized impact on nonsmokers. Nonsmokers inhaling what is being called sidestream smoke (fumes from the burning end of the cigarette, in contrast to mainstream smoke coming from direct inhalation) are exhibiting symptoms of smoking-related illnesses. Spouses of smokers appear to be affected by the fumes lingering in the home. Nonsmoking workers are even more affected because of the concentration of smoke fumes in the air throughout the working period. In addition, other studies are showing that smoking and exposure to certain chemicals in the workplace have a deleterious synergistic effect.

The economic impact of smoking on productivity is stimulating the creation of formal company policies which aim at discouraging smoking, encouraging nonsmoking and protecting nonsmokers from the effects of involuntary smoking. They include education programs on the dangers of smoking, making available what are being called cessation programs to help stop smoking, and setting aside designated smoking areas. Such company policies form the framework for future restrictions on the right of workers to smoke at all. In my view, the restrictions will eventually make nonsmoking a requirement for hiring as well as placement, promotion and continued employment.

ORDINANCES. Contributing to management's toughening stance on smoking are two other developments: state and local ordinances that restrict or bar smoking in public buildings, restaurants and places of employment; and, lawsuits against employers based on injury resulting from exposure to smoking in the workplace.

More and more communities are enacting ordinances which impose restrictions, including prohibition of smoking or segregation of smokers. Employers in those communities must comply, at the least, by setting up designated smoking areas with sufficient ventilation or air-movement barriers to protect nonsmokers from the fumes. Among the states and cities which have enacted some type of law or regulation are: California, Connecticut, Hawaii, Maine, Minnesota, Nebraska, New Jersey and Utah; and San Francisco.

The prospect of lawsuits by nonsmokers is looming in every company. Beginning in the mid-70s, a series of lawsuits by individual employees has established precedent for the right of workers to be free from exposure to cigarette smoke. The right has been based on the effect of smoking on the hypersensitive individual as well as the effect of involuntary smoking on nonsmokers. The courts have been viewing hypersensitivity as a handicap, bringing into play statutes protecting handicapped workers.

LIABILITY. "Legal liability is becoming a No.1 issue for personnel departments," The American Lung Association's A. Judson Wells told me. "They see such lawsuits coming from nonsmoking employees who object to smoking in the workplace. And they anticipate lawsuits in the future from employees claiming they were made ill by this workplace hazard which the company knew about but did nothing about."

continued on page 27

There are good precedents for such state responsibility and action. New York, New Jersey, Massachusetts and Maryland, among others, have restrained the health care costs their citizens pay going back to the 1970s.

Placing limits on budgets to make health care affordable doesn't mean simply scaling back traditional forms of health care and the organizations through which it is administered. Just the contrary. Innovations should be fostered. There needs to be fresh vision, a breaking of new ground. As an example, we can look at prepaid group practices which have demonstrated their cost-effectiveness through lower hospitalization and organized programs for primary care.

A fair and workable program of cost containment should not be targeted on vulnerable individuals and health institutions. The necessary controls must include all the pay-out sources: government, private insurance companies and individuals. At the same time, hospitals must be assured that they will be reinbursed appropriately for services to patients without adequate insurance.

In essence, what is being proposed here as an equitable and effective program of cost control is a complete 180-degree turnaround from the current direction of containment. This means control of *prices and volume of medical services*, not the curtailment of the benefits of public and private programs. By holding to this principle, we can assure the solvency of the Medicare trust fund without reducing benefits or raising taxes.

SAVING. Asking providers to tighten their belts instead of shifting costs is not a novel or untried suggestion. States that have placed controls on all payers have demonstrated that savings are possible without reducing access to care, or the quality of that care.

Money itself is not the main problem. We already are spending enough to enable every American to get the care he or she needs when and where it is needed.

The problem is the raging inflation in the health care structure that is threatening our present commitments and future goals. But even getting a handle on this inflation and reducing costs are not ends in themselves. They are only the means to an end. They are the essential tools to save Medicare without reducing benefits and increasing taxes.

There are two other desirable and attainable goals. Cost controls are a way to help relieve budget deficits; they can also be a prod to reform the way we now provide and pay for American health care.

Controlling health care cost escalation must be even-handed. As providers must be held accountable to a standard of social responsibility, so must they be assured of predictable and fair financial returns.

Such a far-sighted, broad-based program for redirection of our talents and resources will not easily be put in place. Entrenched interests can be expected to resist reforms, as they have succeeded in doing in the past. But there is a new force abroad in the land today—a coalition that includes, along with millions of concerned private citizens, broad representation of businessmen, labor leaders, insurance executives, hospital administrators and physicians who see the urgent need for change.

Through the combined efforts of all of these elements, the long-overdue containment of runaway health care costs can be achieved. Then, and only then, can we turn our resources toward the true advancement of our national aims and interests. OH&S

LEGAL PERSPECTIVE, *continued from page 24*

Wells is a retired scientist-manager from DuPont Co. who serves as a volunteer special assistant for the American Lung Association. He works with companies, helping them set up smoking policies and smoking-cessation programs.

"The literature is showing conclusively that some of the combustion products of cigarettes are toxic," he declares. "They are dangerous substances which are carcinogenic and addictive. The government refuses to ban them from the workplace. The tobacco industry has been successful in avoiding regulation by OSHA, the EPA and the FDA."

The tobacco industry is taking the offensive in fighting employee lawsuits as well as opposing statutory restrictions on smoking. The theory is that no rational basis exists for discriminating against smokers. The industry challenges statistics showing a strong correlation between smoking and employment costs.

The industry has been successful over the years in defeating product liability claims from people claiming injury from their own smoking. Will tobacco producers be equally successful in fighting the growing movement to ban smoking from the workplace? OH&S

SB 426
#6

Developing Corporate Smoking Policies

by Susan E. Gaughan, MS, RN

Photo courtesy of Beder Health Associates

Employees say goodbye to smoking at company smoking cessation program.

Corporations are reeling from the staggering financial impact of rising health care costs. Worker health insurance policies currently cost the American employer over $60 billion annually (Ostwald, 1986). Since 1950, these expenses have steadily risen from 4.5% of the gross national product to 10.8% in 1983 (Ostwald, 1986). Currently, one out of every ten dollars spent in the United States pays for health-related services (*Personnel Journal*, January, 1984; 41-46) amounting to upwards of $360 billion per year (Ostwald, 1986). This establishes health care as the third largest industry in the United States.

Faced with the prospect of a continued escalation of 16% to 20% per year in health care costs (Ostwald, 1986), corporations are examining alternative approaches to reduce these expenditures. A new interest in wellness and preventive care has emerged as recent programs have begun to show that they can retrieve millions of dollars and help business check these soaring costs. One of the first companies to release a cost-benefit analysis of its health promotion plan was New York Telephone Company. For eight years, it conducted wellness programs that serviced 80,000 employees. Although the bill for the plan was over $2.84 million, a savings of $5.54 million was realized in employee absence and medical treatment, netting New York Telephone Company a $2.7 million profit (*Business Insurance*, September, 1981; 12-13). Interestingly, the most cost-effective program was the smoking cessation clinic. Workers who stopped smoking saved New York Telephone Company $645,000 in sick time and medical care for coronary disease and $1.4 million in pulmonary problems (*Business Insurance*, September, 1981; 12-13).

Just as health care costs have forced the business sector to re-examine its priorities, health care providers are also being asked to justify their services. Occupational health nurses have traditionally presented themselves as cost-effective providers. As financial concerns intensify and alternative professionals compete for the shrinking health care dollar, the nurse's ability to enhance corporate finances will remain an asset. This new interest within the industry to reduce costs by preventing disease may solidify the position of the occupational health nurse within the corporate framework.

The occupational health nurse should become an outspoken proponent of workplace smoking bans. Smoking cessation provides a unique model within the corporate structure in which all the players within the system are potential "winners." Improved employee health translates into healthier corporate pocketbooks, thus serving to affirm the role of the occupational health nurse as corporate advocate as well as employee advocate.

The occupational health nurse should actively promote institutional smoking ban policies. Understanding the financial and legal incentives that make this policy a timely one will enhance the position of the occupational health nurse within the corporate structure.

Despite dreadful statistics, almost 60 million Americans continue to smoke cigarettes (Kannel, 1981). Although there has been a downward trend in cigarette use, most pronounced among men, the percentage of heavy smokers has increased (Fielding, 1985a). Rates are rising for women under 25 (Slone, 1978), with adolescent girls taking up the habit in numbers comparable to boys (Rigotti, 1985). This pattern is alarming because multiple studies have confirmed that cigarette smoking is

the dominant risk factor for myocardial infarction in young healthy women (Slone, 1978). This risk is five times greater among smoking women and ten times greater in those smoking 35 cigarettes per day (Rosenberg, 1983). In women who smoke and use oral contraceptives, this rate increases at least twentyfold, perhaps even fortyfold (Shapiro, 1979). Regardless of sex, cigarette smokers have twice the overall death rate of nonsmokers in all western societies (Kannel, 1981).

FINANCIAL INCENTIVES

In the United States, 40% of all adults still smoke, with health care costs of $8.2 billion and lost earnings of $19 billion annually (Rigotti, 1985). The U.S. Office of Technology Assessment further estimates that smoking-related illnesses cost United States businesses $43 billion in lost productivity each year (*Business Insurance*, September, 1986; 12-13). In establishing corporate hiring policies, little attention has been paid to the personal health habits of the worker. Conservative estimates place the hidden cost of hiring a smoker at $300 to $800 per year. These workers uniformly require more health care benefits and are absent more days per year. Smokers also experience more cardiovascular incidents, cancers, emphysema, bronchitis, pneumonia, and other respiratory diseases (Fielding, 1985b).

William Weis, CPA, Associate Professor of Accounting at Seattle University, has conducted extensive investigations regarding the financial impact of workplace smoking policies. He projects that the cost consequences of employing smokers may approach $5,000 per smoker per year (*Personnel Administrator*, May, 1981; 71-78) for the following reasons.

- **Absenteeism.** 45% greater for women smokers, 57% higher for men, approximately 2.2 days lost per year. At an average $20,000 salary an absence costs the employer $100 per day or $220 per smoker per year.
- **Mortality.** Rates are 70% to 270% higher. Health care utilization costs 50% more—$230 for medical care and $765 for lost earnings due to morbidity.
- **Insurance Costs.** The American Health Foundation estimates smokers cost $45 per year for accidental injuries and workers' compensation claims due to careless smoking. Also, smokers cost an additional $45 each year in insurance premiums for fire, life, and wage continuation.
- **Productivity Loss.** Time lost to smoking (lighting, puffing, etc.) may range from 8 minutes per day to 30 minutes per hour for cigarette smokers (average 30 minutes per day) to 55 minutes per day for pipe smokers. This translates into 18.2 days lost per year per smoker. For jobs where tools go down when people light up, this time/cost figure is substantially higher.
- **Property Damage, Depreciation, and Maintenance.** Furniture replacement intervals can be tripled with nonsmokers. Patching burns can cost as much as $100 per incident. Routine cleaning can be cut by 60% with smoking bans. Wall and window washing and repainting costs can be reduced by two-thirds ($500 per smoker per year).
- **Involuntary Smoking.** White and Froeb (1980) feel nonsmokers suffer one-fifth the damage to small airway function that smokers do if they work beside them. One-fifth cost of medical care, morbidity, and mortality equals $243 per nonsmoker per year. Since two out of three workers are nonsmokers, this translates into $486 per smoker per year.

Also attributable to smoking is the loss of 81 million work days annually and 145 million sick bed disability days per year (US Department of Health and Human Services, 1986).

Early retirement and disability payments are also adversely affected by employees who smoke. Three-fourths of all early retirees smoke cigarettes. These people have been shown to be six times more likely to become disabled (*Small Business Report*, 1986; 11(12):71-77). These data coupled with health and insurance premiums that can be reduced by up to 70% for nonsmoking firms make a nonsmoking policy highly attractive.

British firms are beginning to alter their attitudes regarding smoking.

Smokers uniformly require more health care benefits and are absent more days per year.

Examination of the data reveals that, in Britain, the amount of worker time lost through sickness due to cigarette smoking is more than four times that lost through strikes. People who smoke more than 20 cigarettes per day take twice the amount of sick time as nonsmokers; 40% of heavy smokers die before retirement, as compared to 15% of their nonsmoking British counterparts (*Chief Executive*, July, 1985; 22-23). Since heart disease is the leading cause of death in the United Kingdom, concerns for employee health have increasingly fostered smoking bans.

Canadian corporations have been feeling the negative effects of smoking as well. Some calculations suggest a minimum of $400 million is lost annually in the Canadian business sector from smoker absenteeism (*Canadian Manager*, 1982; 7(2):16-18). Other losses incurred by worker smoking are a 10% loss in salaries and up to 50% increased cost in cleaning, furniture depreciation, and disability

Carbon monoxide levels are three times higher in secondhand smoke, which causes headaches, eye irritation, and nasal problems.

benefits. Productivity is negatively affected by smoking as the process of smoking a cigarette consumes approximately 30 minutes a day or 2.5 hours per week for every smoker employed (*Canadian Manager*, 1982; 7(2):16-18). Since productivity can be significantly improved by hiring nonsmokers, smoking bans are receiving serious attention.

Radar Electric Company, a firm employing 90 workers, was able to reduce its workforce by five after instituting a smoking ban, saving $125,000 in salaries (*Canadian Manager*, 1982; 7(2):16-18). Some firms have reduced their annual cleaning costs by as much as $25,000 after instituting a ban.

American companies reporting the cost-effectiveness of smoking-cessation efforts include Metropolitan Life Insurance, Dow Chemical Company, Johnson & Johnson, Campbell Soup Company, IBM, New York Telephone Company, Ford Motor Company, and DuPont (*Small Business Report*, 1986; 11(12):71-77).

LEGAL INCENTIVES

Recent litigation has fostered a growing concern for the health hazards to nonsmokers working beside smokers, and consequently exposed to high levels of environmental smoke. Tobacco smoke can be either mainstream, that which is inhaled by the smoker, or sidestream, that arising from the burning tip of a cigarette. The latter contains a higher concentration of toxic substances and accounts for about 85% of the smoke found in rooms containing smokers (Fielding, 1985b). Carbon monoxide levels are three times higher with sidestream smoke, producing room concentrations of carbon monoxide and nicotine that exceed ambient air quality levels (Fielding, 1985b). Alarmingly, some studies have demonstrated that air pollutants in business offices allowing smoking are 10 to 100 times higher than outside environmental standards (*Small Business Report*, 1986; 11(12):71-77).

The most common symptoms arising in nonsmokers from passive smoking are headache, eye irritation, nasal symptoms, and cough. Passive smoke can also precipitate allergic attacks in people with respiratory allergies. Workers with angina become symptomatic more readily when exposed to passive smoke, and those with asthma have demonstrated a decline in pulmonary function (*Small Business Report*, 1982; 17(8):18-20). A study measuring nicotine in the urine and saliva of nonsmokers in a smoking work environment found levels equivalent to those in people who smoke one to ten cigarettes daily (Fielding, 1985b). In another study, nonsmokers working in smoking environments for eight hours a day had carboxyhemoglobin levels equivalent to smoking five cigarettes per day (Fielding, 1985b).

Continued chronic exposure to secondhand smoke has been associated with an increased risk for lung cancer. An Environmental Protection Agency (EPA) study suggests that 500 to 5,000 lung cancer deaths are caused each year by involuntary smoking. The EPA concluded that passive smoke is the country's most dangerous airborne carcinogen, posing a public health risk larger than that found in the combined effects of all industrial emissions (*Best's Review*, 1986; 86(10):112-114).

Workers exposed to cigarette smoke may have a greater risk of developing occupational respiratory diseases (Alexander, 1986). Cigarettes may become contaminated with occupational toxins or particulates and serve as vehicles for introducing this material into the mouth or lungs. Toxic agents found in the workplace may react synergistically with cigarette smoke to enhance the hazards found in the area. This has been demonstrated quite clearly with asbestos. Johns-Manville Corporation of Littleton, Colorado recently banned smoking in its 14 plants and announced that it would not hire smokers. The company stated that people who work with asbestos and smoke have a 92 times higher rate of lung cancer than nonsmokers (*Business Week*, May, 1978; 68). Since employers are obliged under the Occupational Safety and Health Act of 1970 to furnish each employee with a workplace that is free from hazards, elimination of smoking can be a central issue.

Recent information about the risks of involuntary smoking is making nonsmokers more assertive about their rights to breathe clean air. In the landmark 1976 case *Shrimp v New Jersey Bell Telephone*, a service representative filed suit to win a smoke-free workplace. The courts awarded Shrimp a smoke-free lounge, bathroom, and work area (*Industry Week*, February, 1982; 101-102). The 1982 Missouri Appellate Court decision *Smith v Western Electric* sustained the employee's right to a smoke-free environment (*Best's Review*, 1986; 112-114). Rulings in California allowed an employee of the Social Security Administration to collect 75% of his salary for a disability due to involuntary workplace smoke, and an airline stewardess was awarded a cash settlement for a disability resulting from in-flight smoke (Knuth, 1986).

The increasing threat of litigation is forcing companies to re-examine their smoking policies. If chronic exposure to tobacco smoke can result in occupational disabilities, then the time has come for corporations to prohibit smoking, to encourage smokers to quit, and to refuse to hire smokers. Employers have the legal right to restrict smoking on company premises and to avoid hiring smokers. These practices are not considered

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by the courts to be discriminatory and no legal barrier exists to date to prevent a company ban (*Personnel Journal*, 1984; 63(9):53-58).

The state of Oregon was the first to enact an Indoor Clean Air Act in 1983. This act prohibits smoking in public places except where specifically designated. Twenty-five other states have followed suit (*Best's Review*, 1986; 112-114). The Senate Government Operations Subcommittee is considering legislation that would restrict smoking in federal buildings and fine offenders up to $500 per violation (*Best's Review*, 1986; 112-114). In a survey conducted by the Bureau of National Affairs, 36% of all companies currently have some form of nonsmoking policy (*Business Insurance*, September, 1981; 12-13). Seventeen states and dozens of cities in the United States have passed laws restricting smoking in offices and other public places (*Small Business Report*, 1986; 11(12):71-77). Another 23% are considering bans. In a letter to its 800 member companies, the American Council of Life Insurance and the Health Insurance Association of America urged the adoption of a nonsmoking policy for their employees (*Best's Review*, 1986; 112-114).

Smoking Statistics

Cigarette smoking remains the single largest source of preventable morbidity and mortality in the United States.

- Smoking contributes to an estimated 360,000 premature deaths annually.*
- Approximately 30% of annual deaths are from coronary heart disease, which is linked to smoking.
- Approximately 30% of annual cancer deaths are smoking related.
- 62,000 deaths are from smoking-related chronic obstructive lung disease.
- Fires caused by cigarettes claim approximately 1,500 lives annually.

**This figure exceeds the total number of Americans killed in Vietnam, Korea, and World War I combined.*
Fielding, 1985a.

COMPANY POLICIES

To implement these changes, many firms offer smoking-cessation programs that support employee efforts. Metropolitan Life Insurance Company founded its Center for Health Help in 1979, and selected smoking as the first cardiovascular risk factor to be addressed. Two thousand four hundred employees smoked, and a variety of programs were offered to help them quit. Metropolitan estimated that smokers cost $336 to $601 per year in expenses, plus 33% to 45% extra in absenteeism. After a four-year campaign to reduce smoking, Metropolitan declared a six dollar return for every one dollar it invested in smoking cessation (Employee Benefit Plan Review, 1986; 41(4):68-72).

Texas Instruments, Incorporated, prohibits its 20,000 employees from smoking in all work areas except for one lounge per facility (*Business Insurance*, September, 1984; 12-13). When the company initiated this policy, the number of people participating in the smoking cessation classes increased tenfold.

Other companies have also taken a strong position to discourage the 30% to 40% of their employees who smoke. Connecticut Mutual has banned smoking from common areas for over two years and is now planning to establish a smoke-free workplace. Aetna Life and Casualty has limited smoking in general access areas, with smoking in private offices only if nonsmokers agree. New England Life forbids smoking in conferences and classrooms. The management dining facility is smoke free and the employee cafeteria has a small smoking area. To support the efforts of smokers, these companies subsidize smoking cessation programs for both employees and their spouses (*National Underwriter*, 1985; 89(40): 28-29).

Sentry Insurance introduced a new smoking policy to its 10,000 employees as a result of concerns expressed by various employees. The company has an extensive wellness program and was experiencing conflict between smokers and nonsmokers. In concern for the health of its employees, a policy that favored nonsmokers was established. Smoking was banned in meetings, conferences, restrooms, and most areas of the cafeteria, while limiting smoking to individual desks. Air quality was monitored and smoking cessation programs were offered to both employees and their family members (*Personnel Administrator*, 1984; 29(12): 12-14).

Pacific Northwest Bell Telephone Company, with 15,000 employees, bans smoking in all of its facilities. The company offers several techniques to help its employees quit, including acupuncture, hypnosis, behavior modification, aversion therapy, nicotine gum, motivational training, and vitamin therapy (*Business Insurance*, September, 1984; 12-13). Prior to the ban, 231 people took advantage of these programs. In the first 18 months of the ban, 1,591 employees and spouses participated. The average cost of these programs per employee was $140, for a total cost of over $224,373. The company normally spends $50 million on group health care benefits per year (*Business Insurance*, September, 1984; 12-13). Since smoking is the number one cause of preventable disease, Pacific Northwest Bell Telephone Company expects to realize considerable savings in future health care benefits through its investment in smoking cessation.

Cigna Health Plan of Arizona, a health maintenance organization

employing 2,000, felt that to be in the health maintenance business and not protect its own workers was contradictory. Consequently, it banned smoking in all of its facilities (*Business Insurance*, September, 1981; 12-13). Stride Rite Corporation in Cambridge also banned smoking in all of its plants due to health and welfare concerns (*Business Insurance*, September, 1981; 12-13). On April 27, 1984, Boeing Company became the largest corporation in the United States to provide a smoke-free work environment. President Malcolm Stamper realized that the company was providing a better atmosphere for its high-tech machinery than it was for its 85,000 employees. Prior regulations regarding smoking were in areas where drifting smoke posed a hazard to delicate computer equipment or food processing facilities. Only recently have such issues as employee health, morale, and productivity begun to impact smoking policies (*Personnel Journal*, 1984; 63(9):53-58).

Boyd Coffee Company in Portland, Oregon, banned smoking for all employees, visitors, and customers because of rising concerns about passive smoking and because tobacco spoiled the aroma of roasting coffee beans. Perhaps because of the swiftness of the change, the local Teamsters Union filed a grievance. Boyd had wanted to limit smoking to individual's cars, but binding arbitration ruled that the space was too confining and posed a health hazard. Consequently, smoking was permitted throughout the parking lot (*Personnel Journal*, 1984; 63(9):53-58). Unions usually do not challenge such bans as they are in favor of improved worker health and safety.

Changing attitudes are also being seen in the military where the Defense Department has established a goal of reducing smoking to 25% by 1990 (Knuth, 1986). New policy bans smoking at all times during basic training, in all auditoriums, classrooms, and conference rooms.

Westlake Community Hospital in Illinois has recently opted to create a positive role model by maintaining a smoke-free staff. The hospital now hires only nonsmokers and prohibits smoking in all offices and lounges. Client and visitor smoking is limited to specific areas and support is provided for smokers who wish to quit (Knuth, 1986).

Smoking Policies IN SUMMARY

Developing Corporate Smoking Policies. Gaughan, S.E. *AAOHN Journal* 1988; 36(9):354-360.

1. Health care costs continue to escalate, forcing corporations to consider the alternative approach of investing in wellness.
2. Instituting a nonsmoking policy has proven financial benefits for many companies. It also demonstrates concern for the protection of the nonsmoker from passive smoke.
3. There is a strong role for the occupational health nurse as an advocate for smoking bans, and as a supporting resource for the employee who wishes to quit.

EMPLOYEE INCENTIVES

Providing financial incentives is another technique that business has utilized to enhance smoking cessation. The immediacy of this reward may be more effective than the fear of health consequences that may take 20 years to develop. Cybertek Computer Products, Incorporated calculated that an average smoker cost them $675 a year in lost time (*Industry Week*, 1982; 212(4):101-102). Consequently, the company offered its employees a $500 "health bonus" if they quit smoking for a year. Thirty-two of the 140 employees have collected (*Business Week*, May, 1978; 68). Speedcall Corporation pays its workers a seven dollar bonus for each week they do not smoke. Last year, the company paid out $9,828 but was rewarded by its insurer with a 5% rate reduction in its employee health care plan. At Intermatic Incorporated in Illinois, President James Miller bet his 800 employees $100 each to stay off cigarettes for a year—25 collected. Workers at Norweco in Washington who do not smoke are paid an extra $10 per month. Reformed smokers at Neon Electric Corporation in Houston make 50 cents extra an hour. Bonne Bell Cosmetic Company in Lakewood, Ohio, pays its workers $250 after six smoke-free months and Merle Norman Cosmetics in Los Angeles has distributed $10 quarterly bonuses for not smoking (*Business Week*, May, 1978; 68).

Riviera Motors, Incorporated took a strong approach to reduce smoking among its 650 workers. It began a campaign to refocus attention on wellness, including smoking cessation classes, exercise programs, and health information. The company also gave a $200 bonus to each person who stopped smoking for a year. Four years later, the smoking rate was down from 48% to 17% (*Personnel Journal*, 1984; 63(9):53-58). Warren Freed, president of Mohoning Culvert Company, pays his employees $1,000 for a year and $500 for the second year of smoking cessation. Only four of the 19 original smokers continue (*Industry Week*, 1982; 212(4):101-102). The company believes the decrease in absenteeism, workers' compensation claims, and insurance claims are well worth the $17,000 program cost.

SUMMARY

There is little dispute regarding the dangers of smoking. The liter-

ature is replete with studies that repeatedly document the physiological effects of cigarette smoking. However, this knowledge does not seem to be well expressed in new behaviors. Millions of Americans continue to smoke, and many corporations continue to accommodate smokers.

New incentives introduced into the system, however, are beginning to produce a shift in the balance. Rising price tags for health care have forced corporations to view smoking cessation and employee wellness as cost-effective mechanisms for financial control. Numerous companies have discovered that the smokers are too expensive to maintain. Not only are they less healthy and less productive, but they have become an occupational hazard to coworkers. The recent fear of litigation seems to have tipped the scales in favor of the nonsmoker.

The time is ripe for nonsmoking to become a corporate policy. The occupational health nurse is in a position to spearhead this drive. Few opportunities afford the nurse such a chance to serve both the employee and the employer without bias. Smoking cessation is a vehicle for improved employee health as well as enhanced corporate finances. The future viability of the occupational health nurse's role may depend on her ability to maximize just such opportunities.

REFERENCES

Alexander, L. Smoking and smoking cessation. *AAOHN Journal* 1986; 34(8):383-387.

Anonymous. No smoking: A profitable policy. *Small Business Report* 1982; 17(8):18-20.

Fielding, J.E. Smoking: Health effects and control (Part I). *Medical Progress* 1985a; 313:491-498.

Fielding, J.E. Smoking: Health effects and control (Part II). *Medical Progress* 1985b; 313:555-561.

Kannel, W.B. Update on the role of cigarette smoking in coronary artery disease. *American Heart Journal* 1981; 101:319-328.

Knuth, G., Parker, J. Workplace smoking policy. *AAOHN Journal* 1986; 34(12):590-595.

Ostwald, S. Cost-benefit analysis. *AAOHN Journal* 1986; 34(8):377-382.

Rigotti, N., Tesar, G. Smoking cessation in the prevention of cardiovascular disease. *Cardiology Clinics* 1985; 3(2):245-257.

Rosenberg, L., Miller, D., Kaufman, D., Helmrich, S., VandeCarr, S., Stolley, P., et al. Myocardial infarction in women under 50 years of age. *JAMA* 1983; 250:2801-2806.

Shapiro, S., Rosenberg, L., Slone, D., Kaufman, D., Stolley, R., Miettinen, O. Oral-contraceptive use in relation to myocardial infarction. *The Lancet* 1979; 1(8119): 743-747.

Slone, D., Shapiro, S., Rosenberg, L., Kaufman, D., Hartz, S., Rossi, A., et al. Relation of cigarette smoking to myocardial infarction in young women. *New England Journal of Medicine* 1978; 298:1273-1276.

United States Department of Health and Human Services. *The Health Consequences of Involuntary Smoking.* A Report of the Surgeon General, 1986.

White, J., Froeb, H. Small airways dysfunction in nonsmokers chronically exposed to tobacco smoke. *New England Journal of Medicine* 1980; 720-723.

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MORE FACTS & FEATURES FOR

NONSMOKERS & SMOKERS

APPENDIX B

AMERICAN LUNG ASSOCIATION
The Christmas Seal People

SMOKING AT THE WORKPLACE

The Changing Legal Situation

THE LEGAL SITUATION: AN OVERVIEW

Employers--in increasing numbers--are asking for guidance about their legal responsibilities relating to smoking in the workplace. And nonsmokers inquire about their legal rights on the job.

This general summary is not a legal treatise but instead provides an overview of the legal situation as of mid-1983. None of the information should be considered as a substitute for legal counsel or as in-depth reporting of legislation on the issue, which varies in states and localities.

Lung Associations are educational organizations and do not counsel employers or employees about legal actions. However, the American Lung Association believes it is important for everyone involved in worksite settings to understand how rapidly the legal situation concerning smoking is changing.

Numerous compensation awards for unemployment, disability, and medical retirement have been made to nonsmokers. Union grievances--even at the arbitration level--have been won by nonsmokers. Every employer permitting smoking in work areas could be vulnerable to all these legal actions by nonsmoking employees.

- The 1976 case of Shimp vs. New Jersey Bell--the first legal challenge to smokers in the workplace--is the cornerstone of a growing body of law which favors the right of the nonsmoking employee to a work environment free of tobacco smoke. Legal opinion rendered in civil actions and

administrative law cases has unanimously accepted the legal and medical definition of tobacco smoke as an occupational health hazard.

An employer's liability actually increases by permitting workplace smoking. In every state except Louisiana the employer is subject to civil action under the common law duty to provide a work environment reasonably free of recognized hazards and to protect the employee from avoidable perils.

In addition, the National Rehabilitation Act of 1973 requires reasonable accommodation for nonsmokers who qualify as handicapped when exposed to secondhand smoke.

- What is an employer's liability if smoking is restricted? Can smoking be banned?

- May an employer hire only nonsmokers without jeopardy?

These two questions are being asked more frequently. The answer to both is that the employer is much more likely to be sued successfully by the nonsmoker than the smoker.

There is no legal precedent for a smoker prevailing in a quest to harm co-workers by smoking. The courts have never yet supported anyone's right to impose a health risk on others. In our courts anyone can seek to file suit; but the consensus of legal opinion is that no smoker would prevail in the legal climate today, unless a labor contract was violated.

This appears to be the current legal consensus: When no labor contract exists, the employer has the right to eliminate smoking on company premises and--even--hire only nonsmokers.

EXISTING LABOR CONTRACTS

What is the employer's legal right to implement a smoking ban in all work areas when a labor contract exists?

Some lawyers are of the opinion that the employer has a duty to bargain before making a unilateral decision to initiate the policy--if the union does not concur with the policy. The reason lawyers give is that a smoking ban would constitute a change in conditions of employment, or working conditions.

The majority opinion, however, is that on the basis of eliminating an existing hazard an employer can make a unilateral decision without bargaining unless there is specific language in the contract outlining the right to smoke in certain areas or at certain times.

It is good advice to the employer, however, to include the union in formulating guidelines since its support (or at least neutrality) can be helpful in molding employee attitudes.

• The widely reported Johns-Manville cases ended in the courts because the company banned smoking on the premises, and the union claimed a contractual right to smoking areas. One case was heard in Massachusetts, where the judge ruled in favor of the ban that the company had an obligation as well as a right to protect its employees on company premises. The other, in contrast, was won in Texas by the union when the court ruled that the company had to provide smoking areas for breaks--as a consideration for addicted employees (this one is being appealed by the company).

• An April, 1983 decision by the Commonwealth of Pennsylvania Court is a good example of what can happen if an employer does not mount an educational program before implementing a smoking restriction policy--and does not make a case for the health hazards of passive smoking. The Venango County (Pa.) Board of Assistance was first advised by the Pennsylvania Labor Relations Board--and then by the Commonwealth Court--that it must rescind its smoking restriction policy because it had "violated its statutory obligation to bargain (with the union) a change in working conditions."

Although the Board presented little evidence of the health risk to nonsmokers as the basis for its action, the dissenting judges in the split decision (4 to 3) based their dissent on the existence of a health hazard.

Legal opinion is that the Board would have won if it had made a stronger case for the health issue. (Several years ago the same court ruled in favor of the Chambersburg School Board's smoking ban because the health issue was a primary factor and the teachers were seen as role models.)

• A lack of health evidence was the significant factor also in another ruling, this one by the District of Columbia Court of Appeals on May 5, 1983 in the case of Adel Gordon vs. Raven Systems & Research Inc. While Ms. Gordon did present some evidence as to her own sensitivity to second-hand smoke, she "presented no scientific evidence of the deleterious effects of tobacco smoke on nonsmokers in general." The Court contrasted the case to the Shimp case, stating that "in Shimp the court took judicial notice of a plethora of scientific studies and affidavits of medical experts before concluding that cigarette smoke posed a serious health threat to all workers." The message to be learned from this case is that any petition for accommodation of a non-smoking employee should be based on the premise that passive smoking is harmful to everyone in general and the sensitive nonsmoker in particular.

The only defense offered--by smokers or unions--in the common law suits has been that of "OSHA pre-emption," an argument stating that the courts should not rule but require the employee to seek relief through OSHA. Since OSHA has no standards for tobacco smoke, the courts have unanimously agreed that the common law can be used to give protection to employees in jeopardy.

PROTECTION OF NONSMOKING EMPLOYEES

The legal situation in which an employer places himself or herself by permitting workplace smoking can be divided into several categories. While there are many other cases in each category than those listed here, the cases used in this summary are those which best illustrate the issues.

Common Law

The common law responsibility is clearly defined as requiring the employer to provide a work environment reasonably free of recognized hazards. Any employer who has exhausted administrative remedies (formal requests to management for a smoke-free work area and the grievance procedure if a union is involved) can then seek protection from the court in a civil suit if no standards or policy exist.

- In 1976 the first case to use this old premise of common law to deal with tobacco smoke was Shimp vs. New Jersey Bell. Mrs. Shimp won a permanent injunction in the New Jersey Superior Court requiring the telephone company to restrict smoking in all work areas and confine smoking to a designated lounge. There was no appeal and the case has since been the basis of all legal decisions favoring non-smoking workers.

- In 1982 an appellate level decision in the Missouri courts in the case of Smith vs. Western Electric upheld the findings in the Shimp case, sustaining the employee's right to sue under the common law for a smoke-free work environment. That case will be reasserted at the trial level in 1983, unless the employer decides to make the necessary accommodation for the plaintiff, Paul Smith.

  This means that Mr. Smith can bring suit at any time unless his employer decides to make his working environment hazard-free. Since there was no argument about the medical evidence of second-hand smoke's deleterious effect--and the appellate court strongly upheld the plaintiff's right to ask for protection from the smoke--it is expected that the plaintiff would win if he is forced to sue.

  Other cases have been filed under the common law in Massachusetts and New Jersey; hundreds have been settled by mutual agreement before being filed in a number of states.

Rehabilitation Act of 1973

This Act requires employers to make "reasonable accommodation" for handicapped employees; and two recent federal decisions have declared employees--who are extremely sensitive to secondhand smoke--as handicapped.

- In the August, 1982 case of Vickers vs. Veterans Administration et al in Seattle, Washington, the nonsmoking employee who had an adverse reaction to tobacco smoke was granted handicapped status and the employer was seen as having made reasonable accommodation by significantly reducing the amount of exposure (relocating his desk, asking smokers nearby to refrain, opening window, etc.).

The Merit Systems Protection Board had set the precedent for such a decision by ruling in June, 1981 that Leroy Pletten of Warren, Michigan was handicapped (Pletten vs. U.S. Army). Experiencing asthma episodes in the presence of tobacco smoke, Pletten was granted reasonable accommodation which prohibited smoking in his entire Division where he as a civilian personnel specialist. Even though other administrative procedures have prevented Pletten from returning to work in the smoke-free environment, the ruling stands as precedent.

Most employees who are impaired only in the presence of tobacco smoke seem to reject the handicapped label and seek another course. Nevertheless employers should be advised that discrimination suits can be brought against them by nonsmoking employees. Employee claims can be filed directly with the Equal Employment Opportunity Commission of a state or the Federal government, or suit can be brought directly in the courts.

Administrative Law

Unemployment and Worker's Compensation

Since 1976 employees in increasing numbers are being awarded claims for passive smoking illnesses and loss of jobs.

- Harriet Brooks vs. Trans World Airlines & Liberty Mutual Insurance paid worker's compensation to an airline stewardess in 1976 because she "sustained an industrial injury" caused by an allergic reaction to the inflight cabin air containing tobacco smoke.

- In 1981 a New Jersey secretary was forced to resign her job as she suffered severe eye irritation and headaches from constant exposure to second-hand smoke (Linda A. Apell vs. Moorestown Board of Education). She was found to have had "good cause attributable to the work for voluntarily leaving such work" and was awarded unemployment compensation on appeal.

Disability

The first disability case awards were in 1976 and 1977 and have been used as precedent in succeeding cases. In California the Supreme Court ruled that an employer was liable for one-third of the disability award made to a man with emphysema because the employee had been on the job that portion of each 24-hour day--and had been permitted by the employer to inflict this harm on himself (Fuentes vs. Workmens Compensation Appeals Board).

A senior Social Security Administration employee in Baltimore was awarded 75% of his salary in compensation for physical ailments caused by passive smoking, even though he could perform the job if the smoke had been eliminated.

- Filed in 1980, the case of Irene Parodi vs. the Merit Systems Protection Board was finally decided in 1982 in California when Ms. Parodi was granted disability retirement unless the government offered her a "suitable job" within 60 days. The reason for the decision in her favor was that she could not "perform her job due to its location in a smoke-filled office." The Defense Logistics Agency had consistently refused to relocate her, restrict smoking, or grant her disability retirement.

Dismissals

Employers today are on shaky ground if they dismiss without other cause any nonsmoking employee who complains about having to work in a smoke-filled environment.

- In 1981 a Minnesota jury (composed of three smokers and three nonsmokers) awarded social worker June Anderson approximately $4,500 in compensatory and punitive damages for having been fired after she complained to her department head about the "cloud of smoke" in her office. She also complained to the Health Department, which cited the agency with violations of the Minnesota Clean Indoor Air Act; Ms. Anderson's retaliatory termination followed.

- The case of Hentzel vs. Singer Corporation, filed in California in 1982, stated that patent attorney Hensel was fired for complaining constantly about a smoke-filled work environment. He filed suit on the basis that he had not been dismissed for just cause; his position was upheld by the appellate court and a trial will be held in mid-1983 to seek reinstatement. The appellate court also indicated that he could sue for monetary damages as a result of "intentional infliction of emotional distress" by management in harassing him about the smoking issue.

This growing protection for nonsmokers is important since many fear to file any action or even make formal complaints to management because of the threat of dismissal. The professional or managerial employee appears to be especially vulnerable to retaliatory actions that can be disguised as unrelated to the smoking issue--and thereby escape the protection of the court or administrative law agency. The trauma of entering into any kind of open adversary relationship with an employer, always with the fear of dismissal present, seems to be the reason so few cases have ever reached the courts.

Labor Union Activity

Until recently, labor unions have not represented the health rights of nonsmokers; but the tide is turning. Many unions willingly represent nonsmokers in seeking smoke-free work environments where regulations or policy exists. In situations where there is no stated policy, unions usually seek special accommodation for the nonsmoker rather than ask for a restricted smoking policy. Unions such as the American Federation of Government Employees and the National Treasury Workers Union have carried cases to arbitration (a procedure where impartial labor law professionals hear both arguments and render a decision, which is normally binding on all parties).

One such case is that of Margaret Wells, an employee of the Department of Labor and member of the American Federation of Government Employees. Wells is acutely sensitive to tobacco smoke. She was granted interim relief by an arbitrator to protect her in the workplace while the case is being heard. A 1983 decision is expected; and lawyers for ASH (Action on Smoking and Health) are representing both Wells and the union in the proceedings.

Of great concern to organized labor are decisions such as the 1981 ruling in the North Carolina Supreme Court stating that a textile worker need not be compensated for the portion of her disabling lung condition caused by her own smoking. Elsie Morrison's condition--byssinosis or "brown lung"--was caused by her exposure to cotton dust but exacerbated by her smoking for at least 20 years; and her compensation award was cut almost in half. Labor's fear is this: its recognition of the hazards of smoking will conflict with its constant battle to eliminate industrial pollution and to win compensation for members with industrially-caused respiratory disease.

LEGAL ACTIONS BY SMOKERS

The only case in the courts today involving a smoker challenging a ban on workplace smoking is in Massachusetts.

- In January 1983 suit was filed by an exemplary nonsmoking employee of the State of Massachusetts (Marie Lee vs. Massachusetts Public Welfare Department), seeking a ban on work area smoking. Lee won a temporary restraining order on January 12 on the basis of her affidavit and that of her allergist attesting to the medical harm she was suffering.

When court reconvened on January 20 so the judge could determine if he should continue the restraining order until the trial date, a smoking employee was permitted to intervene formally. (It should be noted that anyone affected by litigation has a legal right to assert a claim--even if it is not a "good" one.)

In this case the smoking employee asked that the restraints be lifted because as an addicted cigarette smoker she could not perform her work without jeopardy in a smoke-free environment. When the judge did permit smoking again in Lee's workplace until a trial was held, many observors were stunned.

The majority legal opinion is that the judge felt Lee would not suffer "irreparable harm" by working in a smoky environment until the trial date and that it is not unusual to lift restraints when another claim is asserted. The trial will be of keen interest as the smoker stated at a press conference that she is represented by three law firms associated with the Tobacco Institute and that the Tobacco Institute is paying all legal expenses.

Banning Smoking

The consensus of legal opinion is that a smoker could not file a winning suit against an employer who chose to ban smoking in work areas, unless an existing labor contract--with specific smoking language--was violated.

When lawyers at the Equal Opportunity Commission in Washington were questioned about the possibility of discrimination suits filed by smokers, they could see no way such a claim could be sustained. There were no other viable courses of action by smokers which were considered worthy of consideration.

Hiring Nonsmokers

The question of hiring only nonsmokers receives a similar answer relative to potential litigation: it is most unlikely a smoker's suit would prevail.

There is especially solid ground for not hiring smokers when aerobic capacity is a factor affecting job performance or when the risk of fire is great. The concept is presently being tested in the California courts relative to a San Mateo Fire Department decision not to hire smokers and to initiate on-the-job restrictions for existing employees. The Fire Department's position is that smoking impairs job function through reduced lung capacity; and the Department is expected to prevail.

The desirability of an across-the-board rule not to hire smokers has won increasingly wide support in the business community for economic reasons. A good argument has been made that employers do have a right to hire those expected to perform the job most satisfactorily; and one key factor is good health. Previous employment information provided by job applicants would normally give some indication of a predisposition to impairment and substantiate a rejection on the basis of poor attendance or performance. If an applicant wants to quit smoking in order to be hired, this would then become a condition of employment and a return to smoking would constitute grounds for dismissal.

Bearing in mind that the legal system does permit anyone to file suit for any reason--no matter how frivolous it might appear--smoking employees can sue; but it is very unlikely, in many lawyers' opinions, they will ever be able to make a viable case for an addict seeking to harm others while indulging in a habit that costs the employer wasted time and money.

THE CLIMATE OF THE COURTS

Employees who have sought and failed to find relief in the courts--from smoking at the workplace--have done so because of some technical lack in the suit or because they chose the wrong premise of law. The suit by a Federal employees group in the late 1970's was lost because they had filed prematurely without taking prior administrative action.

The 1981 suit by Anthony Kensell against the State of Oklahoma Department of Human Services was filed on constitutional grounds and for monetary damages in both state and federal courts; the federal suit was denied and is on appeal while the state suit is held in abeyance. Majority legal opinion is that there is no constitutional basis for litigation in the occupational health setting.

In the common law setting, however, the tenor of the courts increasingly supports the right of the nonsmoker to seek relief without waiting until the exposure has resulted in "full-blown" disease or injury.

The most recent authoritative outline of the employer's responsibility is found in the unanimous 1982 opinion of the Missouri Appellate court:

> ". . . .the tobacco smoke of co-workers smoking in the work area is hazardous to the health of employees in general and plaintiff in particular. The allegations also show that defendant (employer) knows the tobacco smoke is harmful to the plaintiff's health and that defendant has the authority, ability, and reasonable means to control smoking in areas requiring a smoke-free environment. Thereby, by failing to exercise its control and assume its responsibility to eliminate the hazardous condition caused by tobacco smoke, defendant has breached and is breaching its duty to provide a reasonably safe workplace. . . ."

It is expected that such strong language from a court in a state considered conservative will have great impact on corporate decisions of the future and cause them to give even more consideration to the health needs of nonsmoking employees to avoid litigation.

Both employer and nonsmoking employees should become aware of this favorable climate in the courts to enhance the nonsmoker's chances of achieving a smoke-free work environment through negotiation. This information is intended as educational background rather than as encouragement of individual litigation. The heavy expenditure of time and money, coupled with the emotional strain reported by all those who have gone to court, make litigation a remedy to be used only as a last desperate resort.

THE ROLE OF LUNG ASSOCIATIONS

The American Lung Association believes it is important for everyone involved to understand how the legal situation concerning smoking at the workplace is changing. Those changes have an impact on management, unions, smoking and nonsmoking employees.

Long before any legal actions are considered, however, there are a variety of actions nonsmokers--who are distressed by smoking on the job--can take. They can encourage employers to establish company policies to protect nonsmokers; and Lung Associations can help companies select policies most appropriate for them.

Lung Associations can also acquaint managements and unions with the cases highlighted in this publication.

To encourage company policies, employees can speak to their supervisors and personnel departments. In a recent study of 10,000 nonsmoking office workers

- more than 50% reported difficulty working near a smoker
- another 36% said they were forced to move away from their desks or work stations because of passive smoking

Many personnel departments now report the issue of smoking at work is the single, most frequent complaint brought to management. And management is responding. Nonsmokers make up two-thirds of the workforce.

Employees can suggest that the company undertake surveys to find out how most employees feel about the issue, even what solutions they might propose. Employees, of course, can also take personal action: by letting co-workers know they are bothered by smoke and by putting signs at their desks requesting others not to smoke near their work stations.

Many companies--whether they have unions or not--have quality of worklife committees. Employees can submit ideas and ask that the issue of smoking be reviewed. When unions are involved--particularly if they have safety and health directors--the topic can be considered. Lung Associations may be able to provide key information about the hazards of secondhand smoke and assist management and unions to work together to develop policies to protect nonsmokers.

Although some companies still view the nonsmoker who is distressed as a trouble-causer, more and more companies now see smokers as the source of the particular problem. These companies have taken action to support the needs and requirements of the nonsmoker--when those conflict with those of the smoker. The shift is a dramatic one with long-term implications for a healthier, more smoke-free workplace.

Helping companies take these actions--and also offer effective, nationally tested programs to help smokers quit--are vital services Lung Associations can provide for companies across the country.

6/83

BIBLIOGRAPHY OF LEGAL CASE CITATIONS

Shimp vs. New Jersey Bell, 368 Atlantic Reporter 2nd 408

Smith vs. Western Electric, 643 S.W.2d 10 (Mo.App. 1982)

Hentzel vs. Singer Co., 188 Cal.Rptr. 159 (Apr. 1982)

Lee vs. State of Mass., Superior Court, Bristol County, Case No. 15385

Vickers vs. Veterans Administration, 549 F.Supp. 85(W.D. Wash. 1982)

Parodi vs. MSPB, 690 F.2d 731 (9th Cir. 1982)

Fuentes vs. Workmen's Comp. Appeals Board, 16Cal.3d 1:128CR 673: 41CCC42

Appell vs. Moorestown (NJ) Bd. of Education AT C81-3036 State of NJ Div. Unemp. Comp.

Brooks vs. TWA & Liberty Mutual Ins., 76 SF 257-975 Cal. WC Appeals Bd.

Gordon vs. Raven Systems & Research, District of Columbia Court of Appeals No. 81-1172 (5/5/83)

Commonwealth of Pennsylvania (Venango County Board of Assistance) vs. Commonwealth of Penna., Penna. Labor Relations Board, No. 2167 C.D. 1980 (Commonwealth Court Opinion released 4/28/83)

-- This general summary was prepared for ALA with special assistance from Environmental Improvement Associates --

SENATE HEALTH & WELFARE
EXHIBIT NO. #7
DATE 2/17/89
BILL NO. SB 426

The Honorable Tom Hager, Chairman
Senate Public Health, Welfare
and Safety Committee

February 16, 1989

Mr. Chairman;

As a member of the Rocky Mountain States Tobacco Free Challenge, I am very much in favor of the Senate Bill #426 which would allow all businesses the opportunity to declare their entire areas "Smoke Free". There currently is no such provision in the Montana Clean Indoor Air Act causing confusion to many area businesses. Many such businesses have already declared themselves "Smoke Free" and are concerned about the possibility of being challenged on the subject because they are not operating under the guidelines of the law as it now reads.

It is important to note that this only allows for the option and in no way limits the business to an unpopular policy.

This ambiguity has existed too long in the Montana Clean Indoor Air Act and it is time that this point was clarified, therefore, please accept this written testimony in overwhelming support of Senate Bill #426.

Thank you.

John R Burgess M D.

Dr. John R. Burgess, M.D.
Rocky Mtn. States Tobacco Free Challenge

February 1989

Testimony on Senate Bill 426

Mr. Chairman and Members of the Committee, I am Dr. Donald Espelin, Chief, Preventive Health Services Bureau of the State Department of Health and Environmental Sciences.

I am writing in support of Senate Bill 426, a bill that deals with the use of tobacco as a public health and safety issue.

We have known for many years that involuntary smoking is extremely dangerous to non-smokers. A study by A. Judson Wells, Ph.D., entitled, "An Estimate of Adult Mortality In The United States From Passive Smoking" was released on December 2, 1988, in the journal, Environmental International.

Wells calculates that an estimated 46,000 deaths occur each year in this country from diseases induced by passive smoking. He further breaks this figure down by specific diseases: 3,000 deaths due to lung cancer; 11,000 deaths due to other cancers; and 32,000 deaths due to heart disease. Wells' study, a new statistical evaluation of existing data, is not based in original experimental research, but on exhaustive review and analysis of past studies. This study is yet another affirmation of the conclusion of the U.S. Surgeon General's Report of 1986, that stated environmental tobacco smoke is harmful to non-smokers.

Senate Bill 426 effectively and simply, provides for those interested in designating an area completely smokefree, an opportunity to do so. Simply stated, smokers have a right to create their own gas chamber, but they don't have a right to trap others in it.

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SENATE HEALTH & WELFARE
EXHIBIT NO. #9
DATE 2/7/89
BILL NO. 454

TESTIMONY OF DREW DAWSON
EMERGENCY MEDICAL SERVICES BUREAU
MONTANA DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

Mr. Chairman and members of the committee. I am Drew Dawson, Chief of the Emergency Medical Services Bureau within the Department of Health and Environmental Sciences.

The bill is presented as a recommendation of our Emergency Medical Services Advisory Council. In December, 1988, the concept of this legislation was presented in a series of public information sessions throughout Montana and received wide-spread support.

Emergency services workers, including law enforcement personnel, firefighters, ambulance service personnel, emergency medical technicians and others work under very adverse circumstances. We encourage and train emergency services personnel to take good safety precautions against exposure to communicable disease. This includes the use of rubber gloves, the use of masks for mouth to mouth resuscitation, and other techniques to minimize exposure to communicable diseases.

However, these techniques are fraught with difficulty in the field. There is often poor lighting, broken glass, gasoline, jagged metal and other factors which make adequate protection almost impossible. The patients are frequently bleeding profusely and it is often necessary to do mouth to mouth resuscitation.

Despite the best intentions, it very often logistically impossible for emergency services personnel to totally protect themselves from exposure to a potential communicable disease. This entire issue has been recently reinforced by reports from both the U.S. Fire Administration and by the Center for Disease Control.

When a patient is diagnosed as having an infectious disease, it is very easy to forget the emergency services workers who cared for the patient - often without adequate protection. This bill, patterned after one adopted in Massachusetts, places certain responsibilities with both the emergency services worker and with the health care facility. It is an effort to assure that emergency services workers are notified on a "need to know basis" of their exposure to an infectious disease.

It would work like this:

1. If an emergency services worker sustained an unprotected exposure, he would fill out a standard, and uniform statewide form and present this to the health care facility. This would be presented only when the emergency services worker sustained an unprotected

exposure - not for every patient.

2. If a physician determines that the patient in question has an infectious disease and that the unprotected exposure is capable of transmitting the infectious disease, he would notify the health care facility.

3. The health would then notify the emergency services workers who had submitted an unprotected exposure form. This notification would include standard information about suggested medical treatment and medical precautions.

4. Confidentiality is essential. The bill contains criminal penalties for violation of patient confidentiality.

The Department of Health and Environmental Sciences would, by rule:

1. Define an unprotected exposure. In Massachusetts this includes:

   a. Puncture wounds including those resulting from needles, glass or sharp objects contaminated with blood, or human bites.

   b. Blood to blood contact with an open wound - such as an open cut, sores, rashes, etc.

   c. Mucous membrane contact - such as might occur with mouth to mouth resuscitation, eye splashing with infected fluids such as blood, sputum, and other body fluids

2. Define the list of infectious diseases. Examples used in Massachusetts include:

   a. Hepatitis B Virus infection

   b. Meningococcal infections

   c. Active tuberculosis

   d. Haemophilus Influenza B (HIB) disease

   e. AIDS

3. Develop the standard, statewide form for emergency services personnel to report an unprotected exposure.

4. Define the accepted medical precautions and recommended

treatment the health care facility would provide to emergency services workers who sustained an unprotected exposure to a communicable disease.

We believe this is a necessary bill to protect the health of emergency services workers throughout Montana. It protects the confidentiality of the patient while still assuring emergency services workers are provided with essential information about their exposure the infectious disease. It places responsibility with the emergency services worker, with the health care facility and with the physician. I would urge your support of this bill.

SB 407
TESTIMONY OF DREW DAWSON, CHIEF
EMERGENCY MEDICAL SERVICES BUREAU
MONTANA DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

Mr. Chairman, and members of the committee. I am Drew Dawson, Chief of the Emergency Medical Services Bureau in the Department of Health and Environmental Sciences. I am pleased to testify as a proponent of Senate Bill 407 which was introduced at the request of the department.

For several years an Emergency Medical Services Advisory Council, composed of eighteen different organizations and individuals, has been developing an updated state emergency medical services plan. The Council has been chaired by Senator Jacobson.

We have made a big effort to secure the input and recommendations of emergency medical services providers throughout Montana. Last spring we distributed an opinion survey to approximately 5,000 EMS providers and local government officials. In December, 1988, we held public information sessions at ten locations throughout Montana to solicit public input regarding the Advisory Council recommendations; the content of SB 407 was included in these hearings. Based on the survey and the public hearings, we have made a substantial number of changes to the original recommendations.

As the plan's first priority, the EMS Advisory Council recommended updating the Montana Ambulance Licensing Law. Their recommendations are reflected in Senate Bill 407.

The Montana Ambulance licensing law was adopted in 1971. Although the training and technology of emergency medical services has changed considerably since then, there has been only one minor amendment to the ambulance licensing law. This law has simply not kept pace with the advances in emergency medical services.

PROBLEMS WITH EXISTING LAW

There are a number of problems with the existing statute:

*The list of ambulance equipment referred to is a 1967 American College of Surgeons list. The College of Surgeons has updated their list several times since 1967.

*The wording is very vague, contradictory and often unenforceable. Although it does not happen frequently, there have been several obvious problems with ambulance services with which we have not been able to take appropriate enforcement action.

*There are many details contained in the law which don't allow the flexibility of change as advances are made in emergency medical services.

*The minimum level of training specified is Advanced First Aid and Emergency Care. This was adopted prior to the advent of EMT training and other levels of emergency medical services training and certification.

*The statute refers only to Basic Life Support ground ambulance services. It does not allow for different types and levels of ambulance service - e.g. allowing for differing requirements for Basic Life Support ambulance services and Advanced Life Support Ambulances.

*While ground ambulances must meet certain minimum licensing standards, there are no standards for air ambulance services, either fixed wing or helicopter.

*As emergency medical services systems have matured, other methods of delivering pre-hospital care have developed - such as Quick Response Units and other types of non-transporting medical units. These units are not required to meet any minimal standards.

*The method of granting variances from rules is very awkward. Also, there is no provision for involving EMS providers in advising the department in enforcement and/or variance actions.

SUMMARY OF SENATE BILL 407

Senate Bill 407 does the following:

*Repeals some of the outdated sections

These sections primarily concern equipment and training requirements.

*Provides for the department to classify, by rule, the various types and levels of emergency medical services and provides the licensure of non-transporting medical units and air ambulances in addition to the ground ambulance services.

Emergency medical services providers, often volunteers in your communities, offer essential services. To assure the public health and safety, we feel there is a need to assure each of the emergency medical services (ground ambulances, air ambulances, and non-transporting medical units) meet minimum standards. With the variety of types and levels of services which have evolved in recent years, there is a need for differing standards for various types and levels of services.

For instance, advanced life support units, staffed by paramedics or nurses, clearly have different requirements from units staffed by basic emergency medical technicians. Helicopter ambulance services, responding directly to the scene of medical emergencies and accidents, have differing requirements from fixed wing services which primarily provide transportation between hospitals or medical facilities. Rural fixed-wing air ambulance services which occasionally provide transportation services under the direction of their local physician have differing requirements from full time air ambulance services which are fully equipped and trained to regularly and routinely transport critically ill and injured patients.

Although each of these situations are different, we feel there should be some minimal standards for each different type and level of service. Because we want to build an emergency medical services system throughout Montana, these standards need to clearly recognize the rural nature of Montana and need to be "doable".

The amendments presented require that only those fixed wing services which provide life support personnel equipment and training would be defined as an air ambulance. Charter and fixed base operators which provide no special medical care and provide transportation services only and at the request of a physician would not be defined as an air ambulance.

Because helicopter ambulance services often respond directly to the scene of an emergency and because the public needs to be assured of their equipment and level of training, we propose these services must be licensed.

*Provides authority to the department to investigate complaints and clarifies the enforcement actions allowed by the department.

Complaints about ambulance services are not frequent. However, when there is a complaint, there should be the ability to investigate the complaint and, if necessary, to take appropriate enforcement action. Under the current law, investigation and enforcement action is nearly impossible. If we receive a complaint about the type of care rendered on an ambulance, or about ambulance operations, no matter how flagrant the problem may be, we do not have the capability to investigate or to assure corrective action is taken.

SB 407 would allow for investigation of complaints and would allow the department to take several types of corrective action. The legislation also allows for an appeals process. To assure that there is some peer review, the proposed legislation provides for an advisory committee of EMS providers to advise the department and/or the board regarding enforcement actions.

*Establishes procedures for waiver of rules.

Although we will do our best to develop rules which are realistic for Montana, communities will sometimes be faced with extenuating circumstances which are beyond their control. For this reason, we strongly encourage a method of waiving any of the various requirements.

*Provides rule-making authority to the department regarding licensing standards, classification of services, application procedures and some operational procedures.

Some of the suggested rules have already been presented in the state EMS plan and have been scrutinized in the public information sessions held in December, 1988. Any of the rules will be developed in concert with the persons affected by them.

As identified in the Statement of Intent, the rules must reflect the unique needs of rural Montana and should not be so stringent that the provision of emergency medical care will unreasonably difficult or expensive. We are very

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strongly committed to the development of realistic and reasonable rules for Montana's EMS providers.

*Provides for a two-year licensing period for all emergency medical services rather than the one-year period under the current law.

OTHER COMMENTS

As we have traveled throughout the state and have solicited input and recommendations concerning this legislation, there have been several areas which need explanation to the committee:

We have had numerous discussions regarding the minimum personnel training requirements (to be established by rule) for basic life support ground ambulance services. While we originally proposed the requiring of two Emergency Medical Technicians on ambulance services within five years, the input from field EMS providers have clearly illustrated this is not currently feasible. During the public hearing process, and in cooperation with the EMS providers represented, we arrived at a compromise. We are recommending the rules would require one EMT by October, 1995, allowing First Responders with supplemental training to serve on ambulance services and modifying our training program to allow persons to progress more easily from one level of training to another.

There definitely will be no rules regarding the maximum age or number of miles of ambulance vehicles.

SUMMARY

This legislation updates the ambulance licensing law, extends this to air ambulance and non-transporting medical units and allows for the adoption of reasonable rules by the department.

Based on all of the public input we have received, and the modifications we have made, we feel this is a good piece of legislation which would allow the establishment of reasonable requirements. I urge your favorable consideration.

Thank you for the opportunity to testify.

TESTIMONY OF RICK BANDY, PRESIDENT
MONTANA EMERGENCY MEDICAL SERVICES ASSOCIATION

CONCERNING SENATE BILL 407

Mr. Chairman, members of the committee. My name is Rick Bandy. I am President of the Montana Emergency Medical Services Association. MEMSA is a professional organization that represents EMTs who serve on ambulance services. We are the only organization that speaks on behalf of prehospital emergency care providers. I am also a member of a rural ambulance service in Phillips County.

Senate Bill 407 is a long overdue attempt at revising an antiquated law that causes serious problems for ambulance services.

Emergency medical services is a young and dynamic field that is constantly changing. By taking specific regulations out of the law and putting them in the rules, it allows the state to be more responsive to the needs and changes in emergency medical services.

Our organization developed a state wide protocol manual which tell EMTs how to treat different types of illnesses and injuries. MEMSA updates this book of protocols every two years because our profession is constantly changing and improving the ways we take care of patients.

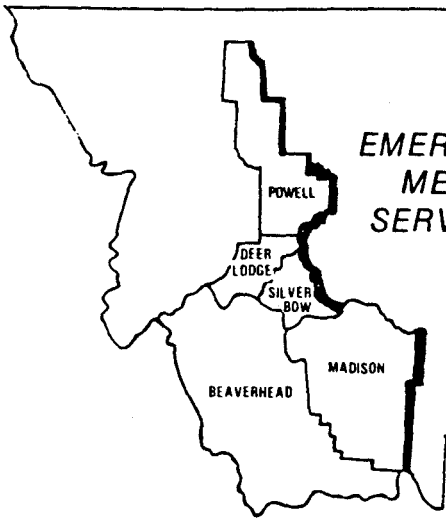
Senate Bill 407 would allow the state to be more responsive to the changes in our field also.

As a member of a rural ambulance service, I have experienced the frustrations of working with the current, outdated law. We are told that we have to carry equipment that will not be used and if we do not have that equipment, we have to spend money to buy it. This list of equipment in the current law is totally inadequate and does not include minimal life-saving equipment that needs to be carried on every ambulance.

There are enough checks and balances in the rules process that we are not concerned about something being included that would be to the detriment of emergency medical services. It would allow the system to be flexible and responsive to Montana's emergency medical services system.

The Montana Emergency Services Association urges a do pass recommendation on Senate Bill 407.

SENATE HEALTH & WELFARE
EXHIBIT NO. #12
DATE 2/17/89
BILL NO. SB 407



EMERGENCY MEDICAL SERVICES EMS REGION 1B

400 SOUTH CLARK STREET
BUTTE, MONTANA 59701
TELEPHONE 782-8361
Extension 4331

February 17, 1989

I'm Gary Haigh an EMT from Ennis and I'm here on behalf of EMS Region 1B Inc. EMS Region 1B is comprised of representatives from the Anaconda Ambulance, Beaverhead Ambulance (in Dillon), Butte EMS System, Deer Lodge Ambulance, Ennis Ambulance and Ruby Valley Ambulance.

First I would like to express a personal opinion. It is time that the legislature start giving serious consideration to emergency medical services in our state. We have laws requiring fire and police protection to keep our property safe but there is nothing that requires the existence of EMS to protect and preserve our lives. This legislation is a step in the right direction.

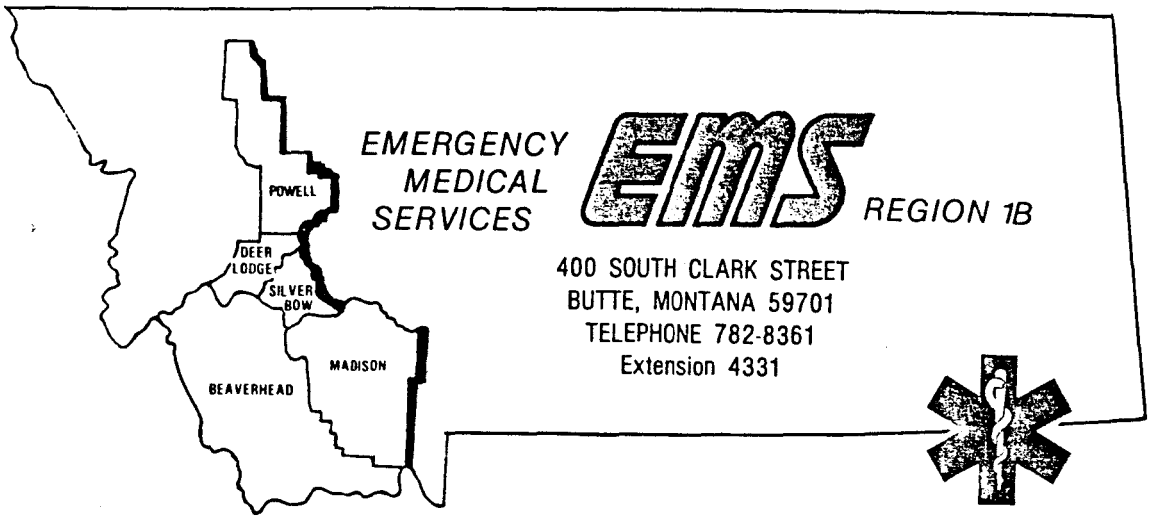
EMS Region 1B strongly supports Senate Bill 407. From the perspective of the rural EMS system this legislation would:

Replace an outdated equipment list for ambulances with a mechanism to create and update a minimum equipment list that is both practical and functional.

Provide the dedicated EMS volunteer with a greater opportunity to influence the rules and regulations that govern their operation.

Establish a clear method through which a service, that due to lack of funding and\or available volunteers can apply for and receive a waiver of licensing requirements.

Create legal standing for nontransporting emergency medical units, better known as quick response units. This would enable these units to acquire liability and malpractice insurance.



EMERGENCY MEDICAL SERVICES EMS REGION 1B

400 SOUTH CLARK STREET
BUTTE, MONTANA 59701
TELEPHONE 782-8361
Extension 4331

Emergency medical services is a dynamic and rapidly changing field. As old levels of training change and new training is created our minimum levels of training for EMS personnel must also be able to change. This legislation would provide the needed flexibility through the rule, regulation and public hearing process.

Generally clarify the EMS Transportation Laws enabling the average EMS provider to understand them.

For these and other reasons EMS Region 1B Inc. actively supports this bill.

Sincerely

Gary R. Haigh
Ennis Ambulance Representative

SENATE HEALTH & WELFARE
EXHIBIT NO. #13
DATE 2/17/89
BILL NO. 407

AARP

1988-1989
MONTANA STATE LEGISLATIVE COMMITTEE

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February 17, 1989

TO: Senate Public Health, Welfare and Safety Committee

FROM: Owen Warren, American Association of Retired Persons

RE: In Support of SB 407, An Act to Generally Revise and Clarify the Laws Relating to Emergency Medical Services

The Montana State Legislative Committee of AARP supports this bill for the following reasons:

In reading the information on the subject furnished by Mr. Drew Dawson, Chief of the Emergency Medical Services Bureau, we can agree that a 1971 licensing law and a 1967 standard for equiping ambulances could hardly meet the standards expected by the demanding public of today.

We are well informed today of modern technology in life saving techniques and in life saving emergencies we expect the best.

Therefore, we salute our guardians of life in times of emergency, for being knowledgable and sensative to these modern day needs of the public.

We recommend you give this your favorable consideration.

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Amendments to Senate Bill No. 407
First Reading Copy

Requested by Senator Jacobson
For the Senate Public Health, Welfare and Safety Committee

Prepared by Tom Gomez, Staff Researcher
February 17, 1989

1. Page 2, lines 9 through 10.
Following: "services" on line 9
Strike: remainder of line 9 through "units" on line 10
Insert: "such as fixed wing aircraft which provide life support services, including medical personnel and medical equipment; initial response rotary wing aircraft; and nontransporting medical units. The department shall exclude from regulation air transportation services such as charter or fixed based operators regulated by the Federal Aviation Administration that offer no special medical services or provide only transportation to patients or persons at the direction or under the supervision of an independent physician."

2. Page 4, line 19.
Following: line 18
Insert: The term also does not include air transportation services such as charter or fixed based operators regulated by the Federal Aviation Administration that offer no special medical services or provide only transportation to patients or persons at the direction or under the supervision of an independent physician."

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2/17/89

Amendments to Senate Bill No. 407
First Reading Copy

Requested by Senator Jacobson
For the Senate Public Health, Welfare and Safety Committee

Prepared by Tom Gomez, Staff Researcher
February 17, 1989

1. Page 3, line 14.
Following: line 13
Insert: "(6) It is not the intent of the legislature, in enacting this bill, to license individual occupations or professions as contemplated under Title 2, chapter 8, part 2. Instead, this bill is intended to expand regulation of emergency medical services. Therefore, this bill is not subject to the requirements of Title 2, chapter 8, part 2, or 5-4-207, which requires that a legislative audit committee report be attached to any bill reported out of a committee of the legislature that proposes to add to the duties of an existing licensing board responsibility for licensing of another occupation or profession."

WITNESS STATEMENT

NAME: Lyle Nagel DATE: 2-17-89

ADDRESS: Box 93 Simms Mt. 59477

PHONE: 264 5850

SENATE HEALTH & WELFARE
EXHIBIT NO. # 14
DATE 2/17/89
BILL NO. SB407

REPRESENTING WHOM? Mont. St. Vol. Firefighters Assn.

APPEARING ON WHICH PROPOSAL: SB407

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

COMMENTS: EMS has progressed so that emergency care of the ... service is now available to a patient in need. Although this is a very worthwhile program, it is not without problems. This bill addresses these problems by regulating and licensing the providers of the service. A provision exists in the bill to allow for waiver of licensing if it creates a hardship for the provider. There are people attempting to provide this service that are not fully qualified and this bill addresses that problem. Nontransporting medical units are a vital part of the total EMS system and need to be regulated and licensed.

Another positive feature of this bill is section 12, creating an advisory committee. Much of the prehospital care provided is done by unpaid volunteers. This committee would provide these people with an opportunity to have some input in the rule or regulation making proceedure.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

The right to hearings and to results of the hearings is also beneficial.

MISSOULA CITY-COUNTY HEALTH DEPARTMENT

SENATE HEALTH & WELFARE
EXHIBIT NO. 15
DATE 2/17/89
BILL NO. SB 437

February 16, 1989

Senator Tom Hager, Chairman
Public Health Committee
Montana State Senate
Capitol Building
Helena, MT 59620

Dear Senator Hager,

I am writing in support of SB 437, the AIDS Prevention Act.

As a local public health official, I am responsible for the control of communicable disease. Control of the spread of HIV, the virus that causes AIDS, is particularly difficult as we have no vaccine or cure available. We do, however, have the opportunity to provide education directly to persons infected and at risk of infection when they present for HIV antibody testing. In fact, the practice of counseling and testing is the cornerstone of AIDS prevention activities.

In our function as one of the state's Counseling and Testing Sites, our department provides testing only in conjunction with counseling. SB 437 could extend this communicable disease control measure to persons who present for testing somewhere other than Counseling and Testing Sites as about 60 percent of test subjects do in this state.

I strongly urge your committee to promote one of the few communicable disease control methods we have available to us for the control of AIDS and favorably recommend SB 437 for passage. Thank you for your consideration of this testimony.

Sincerely,

Ellen Leahy

Ellen Leahy, R.N., M.N.
Acting Health Officer

301 W. ALDER, MISSOULA, MT 59802, (406) 721-5700

Montana Catholic Conference

SENATE HEALTH & WELFARE
EXHIBIT NO. #16
DATE 2/17/89
BILL NO #437

February 17, 1989

CHAIRMAN HAGER AND MEMBERS OF THE PUBLIC HEALTH COMMITTEE

I am John Ortwein representing the Montana Catholic Conference.

Because of the virtually epidemic proportions of AIDS, we acknowledge the need for cooperative efforts by private and public entities to discover ways to treat and cure this disease and to commit adequate resources for basic research, applied research and general education.

All of us have the responsibility and obligation to ensure that persons with AIDS and their families are cared for compassionately. Most certainly persons with AIDS, their families and their friends need solidarity, comfort, and support. We believe that the best approach to the prevention of AIDS ought to be based on the communication of a value-centered understanding of the meaning of human personhood. The pretest and posttest counseling afford the opportunity to deal with the personhood of each person afflicted with the AIDS virus.

The Montana Catholic Conference urges your support of SB 437.

Tel. (406) 442-5761 P.O. BOX 1708 530 N. EWING HELENA, MONTANA 59624

Amendments to SB 437
Proposed by Senator Norman

1. Page 1, Ln. 24, insert the word "predominantly" between "is" and "spread".

2. Page 1, ln 25, to page 2, ln 1, strike the remainder of the sentence beginning with the phrase "a voluntary and informed change . . .", and insert the following:

"the education of those infected and at risk for infection."

3. Page 2, ln. 2-22, strike subsections (2) and (3) of Section 2, and insert the following:

"It is the intent of the legistature that education directed at preventing the transmission of HIV be provided to those infected and at risk of infection and to entreat such persons to come forward to determine their HIV infection status and to obtain appropriate education."

4. Page 4, ln. 13-25, through page 5, ln. 1-3, strike as written and replace with the following:

"(12) "Pretest counselling" means the provision of written materials to the subject prior to conduct of a HIV test. The written materials shall be developed and provided by the department."

5. Page 5, ln. 4-9, strike the remainder of the subsection beginning with the phrase "that is directed toward increasing . . .", and insert the following:

"and includes written materials provided by the department."

6. Page 5, ln. 17-19, strike "without undue inducement or any element of compulsion, fraud, deceit, duress, or other form of constraint or coercion,".

7. Page 6, ln. 1, insert the word "and" between "voluntary," and "that consent", and delete the following phrase: "and that the law prohibits health care providers from refusing to provide health care services solely because a prospective patient will not undergo an HIV-related test".

8. Page 6, insert the following sentence below subsection (d):

"The department must develop a form agreement that may be used for purposes of this subsection."

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9. Page 6, ln. 11, delete the word "perform" and insert the word "request", and on ln. 16, replace "ordering" with "requesting" and replace "performed" with requested".

10. Page 6, ln. 22, delete the word "refer" and insert the word "inform", and on ln. 23-24, delete the remainder of the sentence, beginning with the "to a test site that . . . " and insert:

> "that anonymous testing is avialable at one of the "Counseling and Testing Sites" established by the department."

11. Page 6, ln. 25, through page 7, ln. 1, delete the sentence and insert:

> "The results of the test must be given to the health care provider designated by the subject, who shall inform the subject of the results in person."

12. Page 9, ln. 21-23, delete the sentence beginning, "The health care provider shall . . ."

13. Page 10, ln 2-4, are to be deleted.

SENATE HEALTH & WELFARE
EXHIBIT NO. #18
DATE 2/17/89
BILL NO. SB 437

TESTIMONY ON SB 437
BY JOANNE SHEARER

I OPPOSE SB 437 BECAUSE IT IS OUT OF BALANCE IN ITS PROTECTION OF THE RIGHTS OF THOSE INVECTED WITH HIV WHILE LEAVING THE GENERAL PUBLIC AT RISK. SB 437 DOES NOT ADDRESS THE NEED FOR WIDESPREAD TESTING TO DETERMINE WHO IS INFECTED WITH HIV AND THE ROLE OF AGGRESSIVE BUT ACCURATE EDUCATION IN FIGHTING AIDS. FOR EXAMPLE, SB 437 DOES NOT ADDRESS THE NEED FOR TESTING OF THOSE ARRESTED FOR DRUG ABUSE AND FOR PROSTITUTION.

I WOULD LIKE TO OUTLINE WHAT I BELIEVE TO BE THE COMPONENTS OF A RATIONAL AIDS POLICY:

1. A COMPASSIONATE RESPONSE TO HIV INFECTED PERSONS AND THEIR FAMILIES.

2. EARLY DIAGNOSIS AND TREATMENT OF AIDS SINCE THE SOONER AIDS IS DIAGNOSED, THE MORE EFFECTIVE IN TREATMENT WITH AZT AND IN TREATING OPPORTUNISTIC INFECTIONS AND IN PROLONGING LIFE.

3. WIDESPREAD TESTING SHOULD BE INSTITUED WITH FOLLOW UP OF PARTNER IDENTIFICATION FOR THOSE TESTING POSITIVE. BESIDES HOMOSEXUALS AND IV DRUG USERS, OTHERS WHO NEED TO BE ENCOURAGED TO HAVE AN HIV TEST ARE.

A. THOSE SEEKING TREATMENT FOR A SEXUALLY TRANSMITTED DISEASE.

B. WOMEN WHO ARE CONSIDERING BECOMING PREGNANT AND THEIR SPOUSES.

C. THOSE WHO HAVE HAD MULTIPLE SEX PARTNERS IN THE LAST 5 YEARS.

4. MANDATORY PREMARITAL TESTING SHOULD BE DONE WHEN 1/10 OF 1% OF THE POPULATION BECOMES INFECTED WITH HIV.

5. PRE-HOSPITAL ADMISSION TESTING SHOULD BE DONE ON ALL PATIENTS BETWEEN THE AGES OF 15 AND 50 TO ENABLE THE PHYSICIAN TO PROVIDE OPTIMAL CARE. IF A PERSON TESTS HIV POSITIVE THEN THE PHYSICIAN CAN PRESCRIBE MEDICATION AND A TREATMENT PLAN AIMED AT REDUCING OPPORTUNISTIC INFECTIONS.

6. MANDATORY TESTING OF THOSE ARRESTED FOR DRUG ABUSE OR PROSTITUTION.

7. A STATEWIDE AIDS COMMISSION COMPRISED OF VOLUNTEERS FROM THE PRIVATE AND PUBLIC SECTOR TO ADVISE THE GOVERNOR AND THE LEGISLATURE ON AIDS POLICY.

8. TESTING OF PRISONERS ONLY IF THE STATE PLANS TO USE THE INFORMATION.

THE LAST INGREDIENT OF A RATIONAL AIDS POLICY FOR MONTANA IS AGGRESSIVE ACCURATE EDUCATION AS EDUCATION AND EARLY DIAGNOSIS ARE OUR BEST PREVENTIVE MEASURES IN FIGHTING AIDS. WHEN CONDOM EDUCATION IS PROVIDED, THE RISKS ASSOCIATED WITH CONDOM USE IN HIV INFECTION MUST BE PROVIDED AS WELL. THERE'S CURRENTLY NOT ONE SINGLE SCIENTIFIC STUDY THAT DOCUMENTS THE EFFECTIVENESS OF CONDOMS IN PREVENTING HIV INFECTION. IN FACT, LAST SUMMER THE GOVERNMENT CALLED OFF A 2.6 MILLION DOLLAR CONDOM STUDY IN SAN FRANCISCO WITH HOMOSEXUEL MEN SINCE THE TEST SUBJECTS WERE BEING PLACED AT A HIGH RISK OF AIDS INFECTION DUE TO BREAKAGE AND SLIPPAGE OF THE CONDOMS. THE PUBLIC HEALTH SERVICE HAS STATED THAT CONDOMS ARE ONLY 70-90 PERCENT EFFECTIVE AGAINST AIDS WHEN A PERSON ENGAGES IN PROMISCUOUS SEX. PEOPLE NEED TO KNOW THE FACTS ABOUT THE RISKS OF CONDOM USE AND NOT BE GIVEN A SENSE OF FALSE SECURITY.

EDUCATION PROGRAMS NEED TO STRESS REDUCTION OF HIGH RISK BEHAVIORS AS THE BEST PREVENTION AGAINST AIDS. THE BEST MEDICAL ADVICE THAT THE PUBLIC NEEDS TO HEAR IS THIS: TO AVOID GETTING INFECTED WITH THE AIDS VIRUS, YOU MUST BE IN A BI-DIRECTIONAL, MONOGAMUS, MUTUALLY FAITHFUL RELATIONSHIP - IN OTHER WORDS - A LONG TERM SEXUAL RELATIONSHIP WITH ONE PERSON OF THE OPPOSITE SEX. IN PUBLIC SCHOOLS, SEX EDUCATION CLASSES SHOULD EMPHASIZE SEXUAL ABSTINENCE BEFORE MARRIAGE AS THE PRIMARY MEANS OF PREVENTING HIV INFECTION. JUST AS KIDS ARE TAUGHT TO SAY NO TO DRUGS AND ALCOHOL AN INTENSIVE CAMPAIGN WITH COOPERATION OF SCHOOL, CHURCH AND HOME NEEDS TO BE UNDERTAKEN TO TEACH KIDS TO SAY NO TO PROMISCUOUS SEX.

WHAT WE NEED TO FIGHT THE AIDS EPIDEMIC IN MONTANA IS NOT PANIC OR HYSTERIA BUT A COMMON SENSE APPROACH TO CURBING THE SPREAD OF THIS DISEASE. PLEASE VOTE NO ON SB 437.

American
Dental
Association

211 East Chicago Avenue
Chicago, Illinois 60611-2678
(312) 440-2500

ADA

SENATE HEALTH & WELFARE
EXHIBIT NO. 12
DATE 2/17/89
BILL NO. SB 437

February 16, 1989

Mr. Ed Kozelek
Director of Governmental Affairs
Ohio Dental Association
1370 Dublin Road
Columbus, Ohio 43215-1009

Dear Ed:

Enclosed are excerpts from 1988 laws that permit disclosure of HIV information to health care providers in certain circumstances. Thirteen states are represented (California enacted two laws on the subject). I believe I omitted New York from the count when we spoke last week.

We have contacted three other organizations looking for informtaion on confidentiality/disclosure laws in all 50 states without success so far. I'll keep you informed.

This is, probably the best argument that can be made from the information available:

The states appear to have reached a consensus that dentists and other treating health care professionals should have access to all pertinent information about their patients' health, including their HIV status. States that have adopted special confidentiality protection for AIDS/HIV information, have overwhelmingly included disclosure to health care professionals among the enumerated exceptions.

Since the ADA Department of State Government Affairs began tracking AIDS-related legislation in 1987, the pass rate for disclosure bills has risen from 50% to over 75%. In 1987, bills to permit disclosure to health care professionals were introduced in four states. They were enacted in two. In 1988, disclosure bills were introduced in 18 states and enacted in 13. Four failed and one bill carried over to 1989.

One of the thirteen states that authorized disclosure was California whose AIDS/HIV confidentiality law was considered the strictest in the nation. The California law now permits disclosure of HIV test results to the test subject's "providers of health care... for purposes of diagnosis, care or treatment."

A disclosure provision is part of the Uniform Health Care Information Act adopted by Alabama and Montana. Section 2-104 of the Act permits disclosure of any health care information, including HIV information, without the patient's authoriziation on a need-to-know basis to his or her health care provider.

Disclosure laws permit consultation among treating health care professionals. They permit professionals to share information necessary for proper diagnosis and treatment of their patients. For these reasons, disclosure to treating health care professionals is increasingly recognized as a necessary exception to AIDS/HIV confidentiality laws.

Sincerely,

Kathleen

Kathleen Todd
Assistant Director
State Government Affairs

KT:lb
enclosures

TESTIMONY IN OPPOSITION OF SB 437
Bryan Asay, Mt. Family Coalition

The Montana Family Coalition opposes SB 437 because this legislation approaches AIDS as a civil rights issue rather than a medical and public health issue. To combat AIDS we need a temperate and reasonable approach that promotes tried and true traditional public health methods that have been used for other sexually transmitted diseases.

This legislation assumes that if people are provided privacy and confidentiality of their AIDS status that more people will come forward to be tested. In states where confidentiality laws have been enacted, there has been no rush for people to come forward for testing. This is because denial of infection is the main reason high risk groups are not volunteering to be tested and not because they fear disclosure of the test results. In New York City a study was conducted on drug abusers on therapy. They were asked the reasons they had not voluntarily submitted to an HIV test since they fell into the high risk category. Twenty percent stated that they did not want to know, 46% stated "I don't think I've been exposed to HIV" and only 9% stated they were afraid the information would not be kept confidential. Yet we are basing this law on the premise that people will come forward to be tested if we have confidentiality and rights to privacy.

The section of this bill penalizing physicians should be deleted since the doctor seldom breaks the patient's confidence. Where confidence is broken it is broken by family members or former lovers, not Doctors. In California, laws penalizing physicians for breaking confidence have been overturned since they were not in anyone's best interest. The confidentiality and rights to privacy section of this law prohibits the practice of medicine to benefit the patient.

Our best line of defense against discrimination and punitive treatment of AIDS sufferers is intensive public education that informs people of the routes of transmission of the AIDS virus. Once employers understand that AIDS cannot be transmitted through casual contact in the workplace, they have no fear of continued employment of an HIV positive employee. Ignorance of AIDS fosters fear, which fosters discrimination. Confidentiality laws and right to privacy laws will not stop discrimination against AIDS patients.

United States Postal Service

SENATE HEALTH & WELFARE
EXHIBIT NO. #21
DATE 2/17/89
BILL NO. SB #424

February 17, 1989

Senator Tom Hager
Chairman Public Welfare and Safety Committee
State Capitol
Helena, MT 59620

Dear Senator Hager;

I support Senate Bill #426 "An act to revise the Montana Clean Indoor Air Act...".

The U. S. Postal Service has implemented a very strict nation wide smoking policy, with excellent results.

Thank you.

Thomas E. Heyes
Safety Specialist
U. S. Postal Service
1100 W. Kent
Missoula, MT 59801-9994

United States
Postal Service

SENATE HEALTH & WELFARE
EXHIBIT NO. #22
DATE 2/17/89
BILL NO. SB 426

February 17, 1989

Senator Tom Hager
Chairman Public Welfare and Safety Committee
State Capitol
Helena, Mt. 59620

Dear Senator Hager;

I support Senate Bill No. 426, "....to allow the proprietor or manager of an enclosed public place to desiginate and reserve the entire area as a nonsmoking area...."

We have implemented a non-smoking policy at the Helena Post Office with positive results.

Thank-you.

Earl Dorsey

E. D. Dorsey
Postmaster
U. S. Postal Service
Helena, Mt. 59601-9998

MISSOULA CITY-COUNTY HEALTH DEPARTMENT

February 16, 1989

SENATE HEALTH & WELFARE
EXHIBIT NO. #23
DATE 2/17/89
BILL NO. SB 437

Senator Tom Hager, Chairman
Public Health Committee
Montana State Senate
Capitol Building
Helena, MT 59620

Dear Senator Hager,

On behalf of the Missoula City-County Board of Health, I am writing in support of SB 437, "The AIDS Prevention Act." Our local health department is one of the state's nine Counseling and Testing Sites established by the Centers for Disease Control through the Montana Department of Health and Environmental Sciences. Our institution conducts HIV antibody testing and counseling in a manner consistent with to the provisions in SB 437 and, for purposes of communicable disease control, endorses the promulgation of these provisions for all HIV antibody testing conducted in the state.

Control of communicable disease is an extremely important health department responsibility that, in relation to AIDS and HIV infection, is particularly difficult. In the absence of a vaccine or cure for this disease, public health officials must rely heavily on education to prevent its spread. Because persons presenting for HIV antibody testing furnish an invaluable opportunity to provide this necessary education and because the test, when performed without counseling is severely limited in its usefulness, this department offers HIV antibody testing only in conjunction with adequate counseling.

I strongly urge your committee to favorably recommend SB 437 for passage.

Sincerely,

Bill McDonald, Chairman

301 W. ALDER MISSOULA, MT 59802 (406) 721-5700

Drawer 7
Bonner, Montana 59823
406 258-5511

SENATE HEALTH & WELFARE
EXHIBIT NO. #24
DATE 2/17/89
BILL NO. SB 437

Champion
Champion International Corporation

February 16, 1989

Senator Tom Hager
Chairperson - Public Health Committee

Dear Senator:

I am writing to urge your support for Senate Bill #437. We need uniform standards on Aids testing and counseling. We need to bring all testing centers to standards. I request this of you not only as a health professional but also as a concerned parent.

Thank you in advance for your time and I would appreciate your support.

Sincerely,

Julie A. H. Beckel

Julie A. H. Beckel, RN, CEAP
Occupational Health Nurse
EAP Coordinator

JB:md

SB 437

THE WESTERN MONTANA CLINIC

515 WEST FRONT STREET
MISSOULA, MONTANA
59802

TELEPHONE (406) 721-5600

February 17, 1989

SENATE HEALTH & WELFARE
EXHIBIT NO. #25
DATE 2/17/89
BILL NO. SB 437

Health Services Committee
Of The Montana State Senate
Helena, MT 59601

Dear Committee Members:

I wish to write in support of Senate Bill 437, Sections 1-5 and to suggest a clarification of Section 6.

I have been in the practice of general internal medicine for seven years in Missoula and have a number of patients with HIV-related disease whom I see regularly. I am well acquainted with the difficulties that this disease presents to not only infected individuals but also their families, loved ones, and to the community at large.

With regard to pre and post test counselling, I strongly support the Senate Bill 437, Sections 2 and 4 as written. The degree of irrationality and ignorance surrounding this disease is immense. This results not only in unnecessary fear on the part of low risk individuals, but also results in inadequate screening on the part of high risk individuals. Only through effective and responsible counselling as outlined in Section 4, can this irrationality and ignorance be dealt with.

I would also like to strongly support that confidentiality of HIV testing results be given a high priority. I must ask, however, for clarification of Section 6. Without confidentiality, those at high risk of HIV infection, including homosexual males, IV drug abusers, prostitutes and those receiving blood transfusions prior to 1982, cannot be expected to come forward in the current environment of fear, ignorance and discrimination. If confidentiality of testing can be assured to a reasonable extent, then it is much more likely that those at high risk who need to be screened and counselled regarding further spread of the disease will come forward.

I would like to clarify, however, that the disclosure of identity of HIV positive persons by a health care worker to another health care worker who is responsible for providing health care to the patient must clearly be allowed without any fear of fine. I believe that Section 9, attached to the copy

of the Bill I have does allow for health care workers providing care to the patient to know the patient's HIV positive status. If it does not, however, I would strongly recommend that this be the case. It appears that Section 6 does not allow free transmission of information between health care workers, but that Section 9 does allow this. I believe it would neither be fair nor ethical, nor in the HIV infected patient's best interest for health care workers involved in the care of that person to not know the patient's HIV status.

Thank you for your consideration. Please let me know if I can provide more information.

Sincerely yours,

Anne M. Murphy, M.D.

Anne M. Murphy M.D.

AMM:br

SENATE HEALTH & WELFARE
EXHIBIT NO. #26
DATE 2/12/89
BILL NO. SB 437

TESTIMONY ON SB 437
PRO-FAMILY WOMEN'S LOBBY
Helena, MT.

Senate Bill 437, if enacted, would tie the hands of physicians to combat the AIDS epidemic in Montana. Section 4 of SB 437 that requires informed written consent of the subject of the test hinders the physician in the routine practice of medicine. Illinois overturned their law requiring written informed consent and Florida may soon follow suit.

Anonymous, confidential, voluntary testing in other states has failed to identify the majority of those infected with HIV. InNew Mexico's Sexually Transmitted Disease study, everyone who came in for treatment was given the opportunity to take an HIV test. Eighty-six percent volunteered to be tested; 14 percent refused. Since the doctors had blood samples of everyone, theydidblind tests of those who refused. Those who refused the test were 5 times more likely to be infected than those who volunteered.

An aggressive program of contact tracing to identify those infected with HIV is essential to prevent the spread of AIDS. The recent multimillion dollar settlement in the Rock Hudson case, has set a precedent that those infected with HIV are under moral and legal obligations to disclose their sex contacts. Quite to the contray, Section 4 of SB 437 states, "The health care provider shall inform the subject that he is under no legal obligation either to disclose names of contacts or to authorize their notification."

The importance of pre-test counseling in this bill is overstated. In October 1988 the Saturday Evening Post published an article regarding military testing where little or no pre-test counseling is provided. After 3½ years and over 4 million recruits, there have been no reports of suicides or psychological problems in the 3,000 re-

cruits testing positive for HIV. Also I question the need for and the practicality in Montana of requiring CDC certified counselors for all pre and post test counseling.

The sections of SB 437 relating to counseling, testing, and the need to give HIV test results in person may have no practical application if home test kits for AIDS are approved by FDA. With a home test kit, an individual draws his/her own blood and sends the sample to a lab with a number. Test results are then related by telephone. Home test kits are in great demand and in all likely hood will be approved by FDA.

Under Section 4 regarding who the test results must be given to, the subject's spouse is listed but live-in lovers and others known to be sexually intimate with the subject are not included. Since knowledge of infection is our best defense against AIDS, these individuals must be told as well.

In conclusion SB 437 is regressive in nature and will actually hinder physicians and public health authorities in their attempts to combat the AIDS epidemic in Montana. Testing for HIV infection should be a routine part of the practice of medicine - not something that is hidden under lock and key. Vigorous leadership coupled with accurate education and traditional public health measures will be the best things doctors can do.

Patty Carrell
Pro-Family Women's Lobby
2/17/89

SB437
2/17/89

Amendments to SB 437
Proposed by Senator Norman

1. Page 1, Ln. 24, insert the word "predominantly" between "is" and "spread".

2. Page 1, ln 25, to page 2, ln 1, strike the remainder of the sentence beginning with the phrase "a voluntary and informed change . . .", and insert the following:

"the education of those infected and at risk for infection."

3. Page 2, ln. 2-22, strike subsections (2) and (3) of Section 2, and insert the following:

"It is the intent of the legistature that education directed at preventing the transmission of HIV be provided to those infected and at risk of infection and to entreat such persons to come forward to determine their HIV infection status and to obtain appropriate education."

4. Page 4, ln. 13-25, through page 5, ln. 1-3, strike as written and replace with the following:

"(12) "Pretest counselling" means the provision of written materials to the subject prior to conduct of a HIV test. The written materials shall be developed and provided by the department."

5. Page 5, ln. 4-9, strike the remainder of the subsection beginning with the phrase "that is directed toward increasing . . .", and insert the following:

"and includes written materials provided by the department."

6. Page 5, ln. 17-19, strike "without undue inducement or any element of compulsion, fraud, deceit, duress, or other form of constraint or coercion,".

7. Page 6, ln. 1, insert the word "and" between "voluntary," and "that consent", and delete the following phrase: "and that the law prohibits health care providers from refusing to provide health care services solely because a prospective patient will not undergo an HIV-related test".

8. Page 6, insert the following sentence below subsection (d):

"The department must develop a form agreement that may be used for purposes of this subsection."

9. Page 6, ln. 11, delete the word "perform" and insert the word "request", and on ln. 16, replace "ordering" with "requesting" and replace "performed" with requested".

10. Page 6, ln. 22, delete the word "refer" and insert the word "inform", and on ln. 23-24, delete the remainder of the sentence, beginning with the "to a test site that . . . " and insert:

> "that anonymous testing is avialable at one of the "Counseling and Testing Sites" established by the department."

11. Page 6, ln. 25, through page 7, ln. 1, delete the sentence and insert:

> "The results of the test must be given to the health care provider designated by the subject, who shall inform the subject of the results in person."

12. Page 9, ln. 21-23, delete the sentence beginning, "The health care provider shall . . ."

13. Page 10, ln 2-4, are to be deleted.

VISITORS' REGISTER

STATE ADMINISTRATION COMMITTEE

Public Health

DATE: 2/17/89

NAME	REPRESENTING	BILL #	Support	Oppose
Gary R Haigh	EMS Region IB	454 407	X	
Owen Warren	AARP.	407	X	
[illegible]	Tobacco Asst	424	X	
Robert R Johnson	L+C Health Dept	426	✓	
Robert R Johnson	L+C Health Dept	437	✓	
Karen Landgrebe	Self Helena	426	✓	
Mary Beth Traders	Montana AIDS Coalition	437	✓	
[illegible]	Missoula [illegible]	437	X	
Roger Tibbs	MDU Missoula	437		? Amend
BEVERLY CLAGETT	MISSOULA COMMUNITY TRANSPORT SERVICE	407	✓	
LARRY AREY	MT HEALTH NETWORK	407	✓	
"	MT ASSOC OF LIFE UNDERWRITERS	437		AMEND
Jim Ahrens	MT Hosp Assoc	437		
APRIL MILROY	Garfield Amb. Service	407	X	
Ada Wedding	Garfield Amb. Service	407	X	
Nina Acuña	MT Women's Lobby	437	X	
John Driscoll	MT Catholic Conf	437	X	
Brenda Nordlund	MT Women's Lobby	437	X	
Bonnie Laufer	Mont. AIDS Council	437	X	
Linda L. Stevenson	MT Nurses Assoc.	437	X	
Barbara Fitzgerald	Mt. Nurses Assn.	407 454	X	

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

VISITORS' REGISTER

~~STATE ADMINISTRATION~~ COMMITTEE Public He

DATE: 2/17/89

NAME	REPRESENTING	BILL #	Support	Oppose
[illegible]	MMA	407	X	
[illegible]	M.M.A.	437	X	
Shawn Dirziger	MMA	407	X	
Brigan Asay	MT. Family Coalition	437		X
Lyle Nagel	MT St. Vol Firefighters	454	X	
"	"	407	X	
Henry E Lehn.	MT St. Vol. Firefighters	454	X	
" "	" " "	407	X	
RICHARD SEDDON	MT. ST. FIREMENS ASSOC	407 454	X	
Bill Webber	Rae FD / Belgrade FD / Hills Emerg	407/454	X	
MARK FIORENTINO	HAILS Emergency	407/454	X	
TIM BERGSTROM	Billings FIRE Fighters	454	X	
Toni Jensen	Rocky Mt Tobacco Coal	426	X	
Jim Leiter	Health Dept	426	X	
Karen Malum	Cancer Society	426	X	
Cynthia Banks	Lung Assoc	426	X	
Peter Van Nuis	Private / 1st Bank	426	X	
Shelley Olson	Cancer Society	426	X	
Kathleen Cornelius	Fallon Co. Ambulance Ass.	454 407	X X	
Rick Bandy	MONTANA EMS ASSN	454 407	X	
ART BICSAK	MT PRIVATE AMBOR.	454 407	X	

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

VISITORS' REGISTER

STATE ADMINISTRATION COMMITTEE

Public Health

DATE: 2/17/89

NAME	REPRESENTING	BILL #	Support	Oppose
Rick Chiotti	MDHES	SB 437	At Montana Request	
Joanne Shearer	Myself	SB 437		✓
Brenda Desmond	myself	SB 437	✓	
Allen Chronister	American Council of Life Insurance	SB437	✓ with Amendments	
Ken Treeck	MYSELF	437 454	✓	
Patty Currell	Pro-Family Women's Lobby	437		✓
Tom Hopgood	Health Ins Assoc.	437	AMEND	
Neil Egan	Helena AIDS Support Network	437	Yes	
Tim HARRIS	MT. IND. LIVING PROJ	437	✓	
~~Rose Hu~~		~~437~~		
Rose Hughes	MHCA	437		Amend

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

DATE 2/17/89

COMMITTEE ON Public Health

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Opp
Drew Dawson	Dept Health + ES	407 454	✓	

(Please leave prepared statement with Secretary)

J

ROLL CALL VOTE

SENATE COMMITTEE PUBLIC HEALTH

Date 2/17/89 Bill No. SB 442 Time 2/17/89

NAME	YES	NO
SEN. TOM HAGER	X	
SEN. TOM RASMUSSEN	X	
SEN. LYNCH	X	
SEN. HIMSL	X	
SEN. NORMAN	X	
SEN. McLANE	X	
SEN. PIPINICH	X	

Louise Sullivan
Secretary

Sen. Tom Hager
Chairman

Motion: Lynch — 4 C 6
made motion that SB 442 DO PASS.
7 - in favor
0 opposed

1987

ROLL CALL VOTE

SENATE COMMITTEE PUBLIC HEALTH

Date 2/17 Bill No. 426 Time 1:05

NAME	YES	NO
SEN. TOM HAGER	X	
SEN. TOM RASMUSSEN	X	
SEN. LYNCH	X	
SEN. HIMSL	X	
SEN. NORMAN	X	
SEN. McLANE	X	
SEN. PIPINICH	X	

Louise Sullivan
Secretary

Sen. Tom Hager
Chairman

Motion: Sen Rasmussen made the motion that SB 426 BE CONCURRED DO PASS.

Senators in favor 7, Opposed 0.

1987

ROLL CALL VOTE

SENATE COMMITTEE PUBLIC HEALTH

Date 2/17/ Bill No. 454 Time 1:05

NAME	YES	NO
SEN. TOM HAGER	Y	
SEN. TOM RASMUSSEN	X	
SEN. LYNCH	X	
SEN. HIMSL	X	
SEN. NORMAN	X	
SEN. McLANE	X	
SEN. PIPINICH	X	

Louise Sullivan
Secretary

Sen. Tom Hager
Chairman

Motion: Sen. Himsl made motion that SB 454 DO PASS
6 - 1
in favor 7 - oppose 0

1985

ROLL CALL VOTE

SENATE COMMITTEE PUBLIC HEALTH

Date 2/17/89 Bill No. SJR 14 Time

NAME	YES	NO
SEN. TOM HAGER	X	
SEN. TOM RASMUSSEN	X	
SEN. LYNCH	X	
SEN. HIMSL	X	
SEN. NORMAN	X	
SEN. McLANE	X	
SEN. PIPINICH	X	

Louise Sullivan
Secretary

Sen. Tom Hager
Chairman

Motion: Hemisle moved that SJR 14 DO PASS. 7- favor 0- opposed

1987

ROLL CALL VOTE

SENATE COMMITTEE PUBLIC HEALTH

Date 2/7/89 Bill No. 407 Time

NAME	YES	NO
SEN. TOM HAGER	X	
SEN. TOM RASMUSSEN	X	
SEN. LYNCH	X	
SEN. HIMSL	X	
SEN. NORMAN	X	
SEN. McLANE	X	
SEN. PIPINICH	X	

Louise Sullivan
Secretary

Sen. Tom Hager
Chairman

Motion: Sen Norman made a motion to adopt amendments. 7-0 in favor

1987

ROLL CALL VOTE

SENATE COMMITTEE PUBLIC HEALTH

Date 2/17/89 Bill No. #SB 407 Time

NAME	YES	NO
SEN. TOM HAGER	X	
SEN. TOM RASMUSSEN	X	
SEN. LYNCH	X	
SEN. HIMSL	X	
SEN. NORMAN	X	
SEN. McLANE	X	
SEN. PIPINICH	X	

Louise Sullivan
Secretary

Sen. Tom Hager
Chairman

Motion: Senator Himsl made a motion that SB 407 DO PASS AS AMENDED. In favor 7 opposed 0

ROLL CALL VOTE

SENATE COMMITTEE PUBLIC HEALTH

Date 2/17/89 Bill No. 437 Time

NAME	YES	NO
SEN. TOM HAGER	X	
SEN. TOM RASMUSSEN	X	
SEN. LYNCH	X	~~absent~~
SEN. HIMSL	X	
SEN. NORMAN	X	
SEN. McLANE	X	~~absent~~
SEN. PIPINICH	X	

Louise Sullivan
Secretary

Sen. Tom Hager
Chairman

Motion: Norman moved that amendments 1-13 (3 pages, 6 pages) be adopted 7 ~~6~~ ~~op~~ in favor 0 - opposed

1987

ROLL CALL VOTE

SENATE COMMITTEE PUBLIC HEALTH

Date 2/17/89 Bill No. SB 437 Time

NAME	YES	NO
SEN. TOM HAGER	X	
SEN. TOM RASMUSSEN	X	
SEN. LYNCH	X	
SEN. HIMSL	X	
SEN. NORMAN	X	
SEN. McLANE	X	
SEN. PIPINICH	X	

Dorothy Quinn
Secretary

Sen. Tom Hager
Chairman

Motion: by Sen Norman that SB 437 Do Pass as Amended

7 in favor; 0 opposed

1987