

MINUTES

MONTANA SENATE 51st LEGISLATURE - REGULAR SESSION

FREE CONFERENCE COMMITTEE

Call to Order: By Chairman Tom Beck, on April 20, 1989, at 9:00 a.m., in room 312-2, State Capitol.

ROLL CALL

Members Present: Chairman Beck, Senator Williams, Senator Harp, Representative Wyatt, Representative Mercer, Representative McDonough

Members Excused: None

Members Absent: None

Staff Present: Valencia Lane, Legislative Council

Announcements/Discussion: None

DISPOSITION OF HOUSE BILL 57

Discussion: Chairman Beck asked Representative Marks, "It's your bill, do you want to tell us a little bit about what has happened here?"

Representative Marks said, "There were Senate amendments drafted. I think Representative Mercer had them drafted into the bill. I think we discussed it yesterday. The amendment provides the 'locality' rule in all emergency situations, and a 'gross negligence' rule in obstetrical cases. That's a little bit of help, and we think that is probably not too bad of an amendment. Just having the rule itself is insufficient to deal with anything except full proof."

Representative Mercer stated, "When the bill came out of the House, it had the 'locality' rule in it. We were primarily concerned, at that time with just general emergencies and what not. There were other matters, in particular HB 699, in effort to try to deal with the obstetrical prices. Then that bill failed, and the Senate tried to deal with the obstetrical prices somewhat, in this bill."

"Then you got into conference. The first time, they tried to make some special provision for obstetrical

emergencies, and fashion it similar to the 'good samaritan' standard. There seems to be kind of an analogy there, between those kinds of services in some respect. Yesterday, I proposed that kind of an idea, but it is not agreeable to a majority of the House Conference Committee."

"You weren't here yesterday, so I don't exactly know what your position is. I appreciate your calling another meeting, to take another stab at it, but I don't think the House is going any place. Unless you can come to some agreement with my two colleagues from the House, I'm not sure were going any where. It is my feeling that there is a crisis in Montana, and to simply...kick out a 'locality' rule really would be, I think, misleading to the medical world that we have made some major step at trying to address their concern. When in fact, we have not."

Senator Beck said, "Well, Senator Harp and myself...I apologize for yesterday, because I wasn't here and I wasn't aware of the meeting. John (Senator Harp), did you have any comments to make, or are you just here to listen? (Representative Harp shook his head, no.) OK, I'm the same way. Senator Williams, you were here yesterday, weren't you?"

Senator Williams replied, "Yes."

Senator Beck stated, "All right, I guess we have a couple of ideas here. I think Valencia has drawn up another possible amendment combining your amendments with the amendments that were already in the bill. Do you want to pass them out, and just take a look at them. That is all I want to do. I don't know whether we can come to a compromise on this or not. I guess, I want to hear your concerns on the bill. Would you mind relaying them to me because I wasn't here yesterday?" (See Exhibit #1)

Mary McDonough replied, "Mine are three fold on the 'gross negligence' standard. The first problem I have with it is--We had one informal meeting and then we had the meeting yesterday, and a meeting today, and we had various lobbyists and spoke with a lot of people - I don't think this is going to address the situation. I do not think this is going to help anybody out. We talked to some insurance people, and they said it is very unlikely it would affect insurance rates, if this bill were passed. It's very rare circumstances it would affect."

"I think, in my mind, negligence standards, and their definitions are...difficult enough for attorneys to understand. I don't think most doctors, when they are treating a patient, be it an emergency or not, are going to sit down and think - you know is this a 'gross negligence' standard or a regular negligence standard. I just don't think it's realistic. I don't think it's going to address the problem. Now, I worked very hard on HB 699, which was (Representative) Addy's med. and health bill. It's not that I don't think there's a problem with it, or that I don't think that we need a solution. That bill apparently is dead. I supported it, I don't think this is the way to go."

"The second problem I have with it is, I think it is discriminatory standard, because it selects a very select group that it applies to. I think it's unconstitutional."

"The third problem I have with it, is that I think it's --Representative Mercer has spoken that we need to, or he did yesterday, to set a policy. The legislature sets policies and I think that's right. I think it's a bad policy to set because, rather than making more health care available, I think it has a great possibility of lowering the quality of health care. Because 'gross negligence' means in order to prove that you have got to have a quaisically criminal intent to harm someone. Right now, under a negligence standard, all they are asking for is that we act reasonably. I don't think asking someone to act reasonably under those circumstances is too high a standard. Those are my objections to it."

Senator Beck replied, "Okay, does anybody have any comment to make, in regard to the amendments here?
Representative Marks, do you have any further comments to make?"

Representative Marks stated, "Well...I mentioned earlier, that this code book is here to strike the legal technicalities that can vary in obstetrical. If we do, that would address the problem that seems to be the objection."

Representative Mercer, "Mr. Chairman, I guess, this is for your benefit and Senator Harp's benefit, to that which we're hearing today. I would like to just address what Representative McDonough said. From my perspective, I don't think these amendments, that were handed out, solve the problem. There are arguments that this won't do anything to impact insurance, and maybe it won't,

but I still think that it will have some impact on the availability of health care."

"If you were to ease the standard of which someone might be drawn into court. Right now, we have a 'good samaritan' standard. If someone is injured and a doctor shows up on the scene, we would have a gross negligence' standard to try to get a doctor to stay and help the person. Okay? And we are trying to use that same incentive, I think in emergency cases in rural areas. I know just in our own community, I think there's either four or five general family practitioner-doctors, who don't deliver babies at all any more, because they don't have insurance for it."

"They're creating a liability, and I think if they felt that in an emergency situation that they were going to be treated as a good Samaritan,....that they wouldn't be so afraid that there was a different standard. Anybody that thinks that doctors are not in tune to what's going on in the legal world is very naive, because they are very much informed about what is going in the legal world. It impacts them a great deal. I think it would make a big difference for the availability."

"As far as discrimination goes, it's interesting. The bill, when it either came from the Senate or the first conference committee, dealt with all emergencies. It was felt that was too broad, that there had been no showing that there was a crisis in the area of automobile accidents....So, we just narrowed it down to cover obstetrics, because that is where the crisis is. I think that made sense. I don't think that's discriminatory if you are just narrowing it down to where the problem is."

"Again...you can say well your not going to discriminate against anybody. We are not going to do anything that would violate someone's theoretical principles. But, at the same time, that woman has an emergency obstetrical problem, she can just get in her car and drive sixty, one hundred, or two hundred miles to the nearest hospital because we in the Montana State Legislature were principled. We weren't going to allow this poor woman to be discriminated against, and allow a doctor to conserve her. I guess that is what I don't buy."

"Finally this idea of quality health care. I do not believe that the quality of health care in Montana has anything to do with the legal standards. I think it

has to do with doctor's trainings and their professional licensing, their ethics that they have within their own group. Although from a clean lawyers standpoint, we would never want to do this. But, from a social policy standpoint we begin an effort to try to encourage doctors that are not in any obstetrical specialty, to help deliver babies in emergencies and we ought to do this. I guess that is about all."

Representative Wyatt stated, "I guess I am probably the only member of the committee here who has actually had a baby in this situation....My feeling, representing non-attorneys, non-physicians, and woman,.... we do not deserve a secondary standard of care for medical treatment. That is my bottom line and you're not changing my opinion on that."

Senator Beck stated, "I come from a rural county where we have one doctor who actually told me he made \$45,000 last year. He is a new doctor. His malpractice insurance is only \$7,000 but as he exposes himself, as an obstetrician, that's going to wind up being around a \$25,000 bill to him....If he is only making that much money, he is not going to pay that kind of insurance."

"My question is this, if somebody in labor comes to the hospital, they call the doctor, and he says no, I am not coming down, take her on down to...the next biggest hospital. The baby dies, the mother possibly, whatever. Is this what we are really trying to get at? I think we are trying to say, if we are going to have doctors performing, in emergency situations only, we want them to be able to go in there and do the best they can. Without losing their life savings, if they do make a mistake. Doctors make mistakes, just like everybody else, and I guess this is the point I am trying to get at. If we just put this in practice, and if it is abused, take it back off the books. I am trying to give you the scenario of the rural doctors, versus the urban areas. I do not think the problem is in the urban areas, I think it is in the rural areas. Can you answer that?"

Representative McDonough said, "Well, Senator Beck under the law right now, a doctor only has to use ordinary skill, under the circumstances. That is all that is asked of him, to act reasonably. If he makes a mistake, that it is something, that he couldn't--a doctor under those circumstances would make, or something came up that he would have no control over, or could not proceed. There is no basis for suit."

Senator Beck replied, "I was under the understanding, that was where all the argument was. That is where a lot of the malpractice suits do come from. That is, if the doctor makes a mistake, then we begin to get the proof, into the courts. It's a lot harder to prove 'gross negligence' and I don't think there is a doctor out there practicing, that wants to practice 'gross negligence'. I really don't."

"What it is saying, is that he can go down to that hospital and do everything he can, to save that baby and that mother, without exposing himself to a horrendous liability suit. Which he will not even have insurance to cover, if he has been financially forced into dropping his insurance."

Representative Mercer asked Representative McDonough, "Why should the doctor, who assists somebody in a good samaritan fashion, be allowed to have a 'gross negligence' standard. Why shouldn't that doctor be billed to ordinary care? Say that the doctor is visiting a nursing home, and right before his eyes there is an obstetrical emergency and he decides, I am going to help this person. I am not going to get paid for it, that is a distinction, but I am going to deal with this obstetrical emergency. Yet, we are going to allow that person to have a 'gross negligence' standard. Number one, why do we do that in Montana? Number two,...why should that person be entitled to ordinary care why should they be discriminated against?"

Representative McDonough replied, "I think there is a difference between going to a facility and expecting care,...or having an accident happen, and a doctor sees it and goes to treat a patient. There is a difference between going to a hospital where you know all the services you expect, a certain standard, a certain quality in any facility that offers services. I think there is a big difference."

Senator Williams asked Representative McDonough, "Did you look at this map we were given yesterday? Did you evaluate what it said?" (See Exhibit #2)

Representative McDonough replied, "Yes, I looked at it. I couldn't say I evaluated it."

Senator Williams asked, "Do you feel you can walk away from here, and leave all that yellow area in the hands of the one doctor there is in Lewistown. We have a lot of doctors, a lot of good doctors in Lewistown, Montana."

But, if you read the letter from Dr. LaFever (previous written testimony), you could see why he is not going to deliver babies. If you feel that we can walk away leaving one doctor to cover that whole area, I guess maybe we are all wasting our time here, if we cannot address that problem some way or other."

Representative McDonough answered, "Senator Williams, I don't think this bill is going to do it. Nobody has shown me any proof that this bill is going to solve that problem."

Representative Wyatt said, "Both of us, all three of us sitting here, sat in on all the attempts to have a major bill come out of this legislature, and some have made it out of the House. We did what we had control of doing, which would be an insurance basis for those people. At this point, this bill does not do that. Bob (Representative Marks) and I worked together on the biennium project, which is another thing philosophically, saying that we agree with you people."

"What we are saying, is that this bill won't do it. Not only will this bill not to do it, it sets women at a particular legal jeopardy, and that is a jeopardy that the rest of the people do not have."

Representative Marks stated, "I guess fortunately, or unfortunately the maker created us...It seems that only women can have children, and that makes a sex issue out of this. I do not think it is. The main issue is, I am taking this out of your testimony, that you're the only person on the committee that has had a child, you said. I agree with that. However, in the situation like Senator Beck described, it seems to me that you would be better off to have services available. You may have here, what you call lesser skills, but having the next best was on down the road. In a large community, there may be some difference in rational, but perhaps in rural Montana, where we are having these problems, that's the exception. That's the concern I have. You may be putting a family member, or a child in a worse situation, by not allowing the doctor to answer to 'gross negligence', than you were by not having them at all. That's the point with your rational."

Senator Williams asked, "Did I detect, that your are real unhappy with HB 699?"

Senator Harp said, "You sent that over to us to fund, you expected the Board of Investments to fund that thing."

You said you did your part. You handed us an option that we had no way of funding."

Representative McDonough said, "I--we didn't mean to blame you, on the bill, at all. That is not what we are saying. We are just saying, that we supported the concept, and I understand the funding was a real problem there...That is not an issue. I was just saying, the concepts are totally different between trying to set up an insurance pool, and changing the standards for women."

Senator Williams said, "We are looking at today, and what we can do between now and this evening, to address the problem in a little way, or some way to start with. We'll be back in two years, and look at it again. But in that two years, there are a lot of pregnant women running around out there, that are in jeopardy. I'll guarantee...that they are, in any area that has that yellow. Probably in jeopardy in any area. If we could help the situation in any way...That is what bothers me, is the fact that we can sit here and have a tool in our hands that we could help a little bit. If we walk away from here, we are about as guilty as anybody."

Representative Mercer said, "I am not saying this is going to address the problem."

Senator Williams said, "It is going to address it, it's not going to solve it."

Representative Mercer said, "I guess Diana (Representative Wyatt) is not going to let us do this rules change, as far as amending the bill. It seems to me that it is a policy of Montana, that in order to try to encourage doctors, to help people who are in distress and emergency situations, who are a good samaritan. We have raised the standard of 'gross negligence'. We have already made that decision, that we know the doctors will be more apt to help people if there is a gross negligence standard, because then there is not this risk of some law suit. If your accept that existing policy, then you can transfer that to the current problem. We are trying to give doctors some kind of incentive to help people in these obstetrical emergencies. We are doing it in one area, in one way, why can't we transfer that logic in your mind. Don't you believe that there would be additional incentives to do that? If it will work in a good samaritan situation, why wouldn't it work for the obstetrical situation? What would be the difference? In fact, there could be analogies where, if it was a true

emergency outside of the hospital, outside of the emergency room, and the doctor just happened along, we already have a law applying to emergencies and to helping. But, if he happens to be in his doctor's office, or in the hospital, you can take him and send him away. It seems to me like that is a mistake. I guess I don't understand, in your mind, other than your argument that, when you come to a hospital you expect a higher degree of care. I think you are going to get a higher degree of care. Really the whole issue boils down to incentives for care, because we have a lack of availability in Montana, and shouldn't. It is a proven thing that the 'gross negligence' standard works as an incentive, to give doctors the ability to help people who need help. I don't know why we can't at least try it. Then he will be there whenever there is a crisis, at least, he would be available."

Representative Wyatt responded, "I guess there lots of questions in that one question that you asked. Philosophically speaking, I think we are all agreement with that, we just don't know the tool to get there. I guess, going way back to philosophy, in terms of that, the physician obviously feels a calling to that in the first place. I know it would be heart wrenching, for him to turn that person away. He is, though, making the wiser choice, to do that, and he has to live with himself. I guess, if he does that, and in the process he actually thinks through, and says I am going to turn this person away, there is a potential of her losing her life, or the baby losing their life. Then what does, whether you get sued or not have to do with it? I can't believe he would turn the person away. I have that much respect for the physician in the first place, and I don't think he would be sued if he made the prudent decision in his offers of consent...I can give you examples where there might be a family where they should have been sued and were not, because of the respect and the esteem for which they are held. Coming with that, comes some of the presumptions that we made going with that. I guess physicians are more offended by the fact that they are threatened with the suit, whether it happens or not. I understand that, that is an ego situation, and the fact that they are called to do what they are doing. Thank God they are, and I appreciate and love that, but I cannot afford to trade that off for good quality care for the woman, and I'm not going to."

Senator Williams asked, "How do you feel that this would affect the quality care? You just spoke about the physicians, and what they would do. How does this

lower the quality of their care?"

Representative Wyatt said, "I hope it wouldn't, but I'm not willing to risk the fact that we all sink to the bottom or their expectations. If you are told to work from eight until five, you work from eight until five, for the majority of people in the eight until five. That is the standard, and so therefore, the majority of people sink to that standard of living, and are not willing to move up the ladder. I don't want that bottom stair, I want them to have the best."

Chairman Beck said, "Well to get off center here, Valencia (Lane) has prepared some amendments, that include both the Mercer and Wyatt amendments." (See Exhibit #1)

Representative Mercer said, "The only thing that I think is misleading, to say that this includes my amendments, because it includes part of my amendments."

Representative Wyatt said, "It includes all of your amendments except one, which amended Section 2, which is repealed by the Wyatt amendment. I revised your policy amendment."

Representative Mercer stated, "This would not include the 'gross negligence' standard, in those that your handed out."

Chairman Beck replied, "Right."

Representative Wyatt said, "This is the same amendment that I handed out at your request, which removes the 'gross negligence' standard for all kinds of emergencies other than OB, and replaces it with the local community standard."

Representative Mercer stated, "Right, but I guess just accurately, I thought yesterday, to tried to preserve a 'gross negligence' standard for obstetrical cases, and this does not do that."

Representative Wyatt said, "That is correct. In that sense, your amendments did not touch what is already in the salmon colored copy of the bill, which is 'gross negligence' in those situations. Your amendments left that in the bill. These amendments don't. These amendments take out 'gross negligence' in the OB situations."

Representative Mercer stated, "Mr. Chairman, I just wanted to be clear on that, if my name was on it. I don't

agree with these, and I didn't want anybody to think it was my amendment."

Chairman Beck stated, "OK."

Representative Wyatt asked, "So this basically is putting the 'locality' rule in the bill again. Is that correct Valencia?"

Valencia Lane explained, "Yes, what these amendments do is more or less return the bill to the shape it was in when it came out of the House. Which is, local community standards in all emergency situations, and there is no separate standard for OB situations."

Chairman Beck said, "OK, I get the feeling we are kind of on dead center here, so I want to move this thing one way or the other. Diana, (Representative Wyatt) would you care to move the amendments?"

Amendments and Votes: Representative Wyatt, said I move the amendments." (Exhibit #1) Representative Wyatt and Representative McDonough voted in favor of the motion. Representative Mercer, Senator Williams, Senator Harp and Chairman Beck all opposed the motion. The Motion Failed.

Discussion: Chairman Beck stated, "I guess the way we stand right now then, is we are going to set with HB 57 in the Free Conference Committee, because we do not have an agreement on the bill. I want to say one thing, I hope that this does not affect the rural health of the State. I hope that we do not wind up with people going to a hospital and being denied by doctors, because they don't have malpractice insurance and are going to send them on down the road. That is where we are going to set. Thanks, everyone for coming."

Recommendation and Vote: None

ADJOURNMENT

Adjournment At: 9:40 a.m.



SENATOR TOM BECK, Chairman

Mr. Speaker:

We, the Free Conference Committee on HOUSE BILL 57 met and considered: House Bill 57 (reference copy -- salmon) in its entirety.

We recommend that HOUSE BILL 57 (reference copy -- salmon) be amended as follows:

1. Title, line 8.
Following: "OFFICES,"
Insert: "EXCEPT CERTAIN HOSPITAL EMERGENCY ROOMS AND"

2. Title, lines 14 and 15.
Following: line 13
Strike: line 14 through "SITUATIONS;" on line 15

3. Page 1, line 24.
Strike: "Obstetrical"
Insert: "emergency"

4. Page 2, line 8.
Strike: "NONOBSTETRICAL"

5. Page 2, line 9.
Following: "office"
Insert: "-- exceptions"
Following: "(1)"
Strike: "(a)"

6. Page 2, line 10.
Strike: "[SECTION 2] AND"
Following: "subsection"
Strike: "(1)(b) OF THIS SECTION"
Insert: "(2)"

7. Page 2, line 13.
Following: "is"
Strike: "not"

8. Page 2, line 14.
Strike: "rendering the"
Insert: "providing such"

9. Page 2, line 15.
Following: "assistance"

Insert: "only to the extent that those damages are caused by gross negligence or by willful acts or omissions"

10. Page 2.
Following: line 15
Insert: "(2)(a) The provisions of subsection (1) do not apply to a health care provider in a situation in which emergency care is provided in a hospital emergency room by a physician who provides emergency room services in the hospital on a full-time basis."
Renumber: subsequent sections

11. Page 2, line 16.
Following: "(b)"
Strike: "A"
Insert: "When emergency care is provided in a hospital emergency room by a physician who provides emergency room services in the hospital on a full-time basis, a"

12. Page 2, lines 23 through 25.
Following: "Locality" on line 23
Strike: the remainder of line 23 through "ASSISTANCE" on line 25
Insert: "an act or omission that fails to meet the degree of care and skill ordinarily exercised by reputable members of the health care provider's profession, occupation, or association in a like case under a similar emergency situation in the same or a similar locality"

13. Page 3, line 1.
Strike: "this section"
Insert: "subsection (1)"

14. Page 3, lines 3 and 4.
Following: "situation" on line 3
Strike: the remainder of line 3 through first "office" on line 4

15. Page 3, lines 4 through 9.
Following: "situation" on line 4
Strike: the remainder of line 4 through "and" on line 9

16. Page 3, line 15.
Strike: "BUT"
Insert: "and"

17. Page 3, line 18.
Strike: "OF WHICH"
Insert: "that"
Following: "PATIENT"
Strike: "IS AWARE"

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Page 3

Insert: "knew or should have known required treatment"

18. Page 3, line 21 through page 4, line 12.

Strike: subsection (h) in its entirety

Renumber: subsequent subsections

19. Page 4, line 24 through page 6, line 14.

Strike: section 2 in its entirety

Renumber: subsequent sections

20. Page 6, line 16.

Following: "section"

Strike: "SECTIONS"

Insert: "section"

21. Page 6, line 17.

Strike: "AND 2"

22. Page 6, line 25.

Strike: "THROUGH 3"

Insert: "and 2"

23. Page 7, line 3.

Strike: "THROUGH 3"

Insert: "and 2"

And that this report of the Free Conference Committee be adopted.

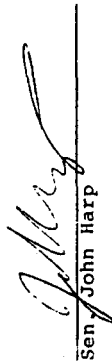
For the House:


Rep. Jessica Stickney,
Chairman

For the Senate:


Sen. Tom Beck, Chairman


Rep. Kelly Addy


Sen. John Harp


Rep. Bob Marks


Sen. Bill Norman

Amendments to House Bill No. 57
Reference Reading Copy (SALMON)

For the Second Free Conference Committee on HB 57

Prepared by Valencia Lane
April 19, 1989

1. Title, line 13.

Following: "LOCALITY"

Strike: "GROSS NEGLIGENCE OR BY WILLFUL OR WANTON ACTS"

Insert: "FAILURE TO EXERCISE THE DEGREE OF CARE AND SKILL
ORDINARILY EXERCISED IN A LIKE CASE UNDER A SIMILAR
EMERGENCY SITUATION IN THE SAME OR A SIMILAR LOCALITY"

2. Title, lines 14 and 15.

Following: line 13

Strike: line 14 through "SITUATIONS;" on line 15

3. Page 1, line 24.

Strike: "obstetrical"

Insert: "emergency"

4. Page 2, line 8.

Strike: "NONOBSTETRICAL"

5. Page 2, line 10.

Strike: "[SECTION 2] AND"

Following: "subsection (1)(b)"

Strike: "OF THIS SECTION"

6. Page 2, lines 23 through 25.

Following: "LOCALITY" on line 23

Strike: remainder of line 23 through "ASSISTANCE" on line 25

Insert: "an act or omission that fails to meet the degree of care
and skill ordinarily exercised by reputable members of the
health care provider's profession, occupation, or
association in a like case under a similar emergency
situation in the same or a similar locality"

7. Page 3, lines 5 through 8.

Following: "provider" on line 5

Strike: remainder of line 5 through "PATIENT," on line 8

8. Page 3, line 13.

Strike: "AND:"

Insert: "."

MERCER
WYATT
Amendments
combined

9. Page 3, lines 14 through 20.

Strike: subsections (I) and (II) in their entirety

10. Page 3, lines 22 through 25.

Following: "hospital" on line 22

Strike: remainder of line 22 through "PATIENT" on line 25

Insert: "whether or not it occurs in an emergency room,"

11. Page 4, line 5.

Strike: "AND:"

Insert: "."

12. Page 4, lines 6 through 12.

Strike: subsections (I) and (II) in their entirety

13. Page 4, line 24 through page 6, line 14.

Strike: section 2 in its entirety

Re-number: subsequent sections

14. Page 6, line 16.

Strike: "SECTIONS"

Insert: "section"

15. Page 6, line 17.

Strike: "AND 2"

16. Page 6, line 25.

Strike: "THROUGH 3"

Insert: "and 2"

17. Page 7, line 3.

Strike: "THROUGH 3"

Insert: "and 2"

Exhibit #1
4-20-89
HB 57

State Legislature

HB 0057/03

HOUSE BILL NO. 57

INTRODUCED BY MARKS, BOHARSKI, CODY, CONNELLY,

J. BROWN, THOMAS, KASTEN, SNYSGOOD, GRADY,

MENAHAN, GILBERT, PETERSON

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING IMMUNITY FROM LIABILITY FOR RENDERING CARE OR ASSISTANCE IN EMERGENCY SITUATIONS IN HOSPITALS OR PHYSICIANS' OFFICES, EXCEPT FOR LIABILITY FOR DAMAGES CAUSED BY GROSS--NEGLECT--OR--BY MISFEASANCE--OR--WANTON--ACTS--PALS TO--EMERGENCY--THE--DEGREE--OF CARE--AND--SKILLS--ORDINARILY--EMERGENCY--IN--A--BIB--CASE--UNDER--A SIMILAR--EMERGENCY--SITUATION--IN--THE--SAME--OR--A--SIMILAR LOCALITY--GROSS--NEGLECT--OR--BY MISFEASANCE--OR--WANTON--ACTS; PROVIDING IMMUNITY FROM LIABILITY FOR RENDERING EMERGENCY--CARE--AND--SKILLS--ORDINARILY--EMERGENCY--IN--A--BIB--CASE--UNDER--A SIMILAR--EMERGENCY--SITUATION--IN--THE--SAME--OR--A--SIMILAR LOCALITY--GROSS--NEGLECT--OR--BY MISFEASANCE--OR--WANTON--ACTS; PROVIDING IMMUNITY FROM LIABILITY FOR RENDERING EMERGENCY--CARE--AND--SKILLS--ORDINARILY--EMERGENCY--IN--A--BIB--CASE--UNDER--A SIMILAR--EMERGENCY--SITUATION--IN--THE--SAME--OR--A--SIMILAR LOCALITY--GROSS--NEGLECT--OR--BY MISFEASANCE--OR--WANTON--ACTS; AND PROVIDING AN APPLICABILITY DATE."

STATEMENT OF INTENT

This legislature finds and declares that there is a crucial need for the people of this state to receive knowledgeable and experienced emergency medical care. The legislature further finds that physicians who serve on an "on-call" basis to hospital emergency rooms are frequently required to provide emergency care to persons with whom they have no preexisting physician-patient relationship. It

is the public policy of this state to provide incentive and protection for physicians and other health care providers who, despite these hardships, respond to calls to provide emergency medical care.

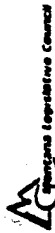
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Limits on liability for care rendered in emergency ~~non-emergency~~ situations in hospital or physician's offices. (1) (a) Except as provided in ~~subsection (1) (b) or subsection (1) (c)~~, a health care provider who in good faith renders care or assistance in an emergency situation occurring in the provider's office or in a hospital is not liable for any civil damages for acts or omissions committed in rendering the emergency care or assistance.

(b) A health care provider is liable for damages caused by gross negligence or by willful or wanton acts or omissions when rendering such emergency care or assistance.

~~AN ACT OR OMISSION THAT FAILS TO MEET THE DEGREE OF CARE AND SKILLS ORDINARILY EMERGENCY BY REPUTABLE MEMBERS OF THE HEALTH CARE PROVIDER'S PROFESSION, OR OCCUPATION, OR ASSOCIATION IN A BIB CASE UNDER A SIMILAR EMERGENCY SITUATION IN THE SAME OR A SIMILAR LOCALITY GROSS NEGLIGENCE OR BY MISFEASANCE OR WANTON ACTS OR OMISSIONS WHEN RENDERING EMERGENCY CARE OR ASSISTANCE.~~

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MERCER/WYATT



HB 0057/03

whether or not it occurs in an emergency for

1 in an emergency room, and that requires immediate services.

2 for alleviation of severe pain or immediate diagnosis and

3 treatment of medical conditions that, if not immediately

4 diagnosed and treated, would lead to serious disability, or

5 death.

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HB 57

-4-

EX. #1
4-20-89
HB 57

HB 0057/03

HB 0057/03

~~(1) NOTWITHSTANDING THE PROVISIONS OF SECTION 1(1)(A), A HEALTH CARE PROVIDER, WHEN THE HEALTH CARE PROVIDER HAS NOT RECEIVED COMPENSATION IN ANY FORM AND HAS NO REASONABLE EXPECTATION OF PAYMENT FOR THE EMERGENCY SERVICES PROVIDED TO THE PATIENT, WHO IN GOOD FAITH, RENDERS EMERGENCY OBSTETRICAL SERVICES TO A PERSON IS NOT LIABLE FOR ANY CIVIL DAMAGES AS A RESULT OF ANY NEGLIGENCE ACT OR OMISSION BY THE HEALTH CARE PROVIDER IN RENDERING THE EMERGENCY OBSTETRICAL SERVICES. THE IMMUNITY GRANTED BY THIS SECTION DOES NOT APPLY TO ACTS OR OMISSIONS CONSTITUTING GROSS NEGLIGENCE OR TO WILLFUL OR WANTON ACTS OR OMISSIONS.~~

~~(2) THE PROTECTION OF SUBSECTION (1)(A) DOES NOT APPLY TO THE HEALTH CARE PROVIDER IN ANY OF THE FOLLOWING CASES:~~

~~(A) THE HEALTH CARE PROVIDER HAD PROVIDED PRIOR MEDICAL DIAGNOSIS OR TREATMENT TO THE SAME PATIENT FOR A CONDITION HAVING A BEARING ON OR RELEVANCE TO THE TREATMENT OF THE OBSTETRICAL CONDITION THAT REQUIRED EMERGENCY SERVICES.~~

~~(B) BEFORE RENDERING EMERGENCY OBSTETRICAL SERVICES, THE HEALTH CARE PROVIDER HAD A CONTRACTUAL OBLIGATION OR AGREEMENT WITH THE PATIENT, ANOTHER HEALTH CARE PROVIDER, OR A THIRD-PARTY PAYER ON THE PATIENT'S BEHALF TO PROVIDE OBSTETRICAL CARE FOR THE PATIENT.~~

~~(3) AS USED IN THIS SECTION, THE FOLLOWING DEFINITIONS APPLY:~~

~~(1) EMERGENCY OBSTETRICAL CARE MEANS A SITUATION OCCURRING EITHER IN A PHYSICIAN'S OFFICE OR A HOSPITAL THAT REQUIRES IMMEDIATE SERVICES FOR THE ALLEVIATION OF SEVERE PAIN OR IMMEDIATE DIAGNOSIS AND TREATMENT OF MEDICAL CONDITIONS THAT, IF NOT IMMEDIATELY DIAGNOSED AND TREATED, WOULD LEAD TO SEVERE DISABILITY OR DEATH OF EITHER THE PATIENT OR THE UNBORN CHILD.~~

~~(B) "HEALTH CARE PROVIDER" MEANS:~~

~~(I) A PHYSICIAN, REGISTERED PROFESSIONAL NURSE, LICENSED PRACTICAL NURSE, OR PHYSICIAN'S ASSISTANT, DULY LICENSED UNDER THE PROVISIONS OF TITLE 37, OR~~

~~(II) A HOSPITAL.~~

~~(C) "HOSPITAL" MEANS A LICENSED HOSPITAL, INFIRMARY, OR HEALTH CARE FACILITY AS DEFINED IN 36-3-101.~~

~~NEW SECTION. Section 3. Authority of licensing agencies not limited. The provisions of Section 1 and 2 do not limit the authority of a governmental licensing or regulatory agency to regulate or discipline health care providers and hospitals.~~

~~NEW SECTION. Section 4. Extension of authority. Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].~~

~~NEW SECTION. Section 5. Codification instruction. Sections 1 and 2 through 4 are intended to be codified as~~

(1) WE OUGHT TO HAVE SECTION 10 IN THE CHINA PATENT ACT
HB 0057/03

UNIVERSITY OF CALIFORNIA

THE UNIVERSITY OF CALIFORNIA

1 an integral part of Title 27, chapter 1, part 7, and the
2 provisions of Title 27, chapter 1, part 7, apply to
3 [sections 1 and 2 ^{and 3} ~~and 2~~].

4 NEW SECTION. Section 6. Saving clause. [This act]
5 does not affect rights and duties that matured, penalties
6 that were incurred, or proceedings that were begun before
7 [the effective date of this act].

8 NEW SECTION. Section 7. Severability. If a part of
9 [this act] is invalid, all valid parts that are severable
10 from the invalid part remain in effect. If a part of [this
11 act] is invalid in one or more of its applications, the part
12 remains in effect in all valid applications that are
13 severable from the invalid applications.

14 NEW SECTION. Section 8. Applicability. [This act]
15 applies to causes of action arising on or after October 1,
16 1989.

-End-

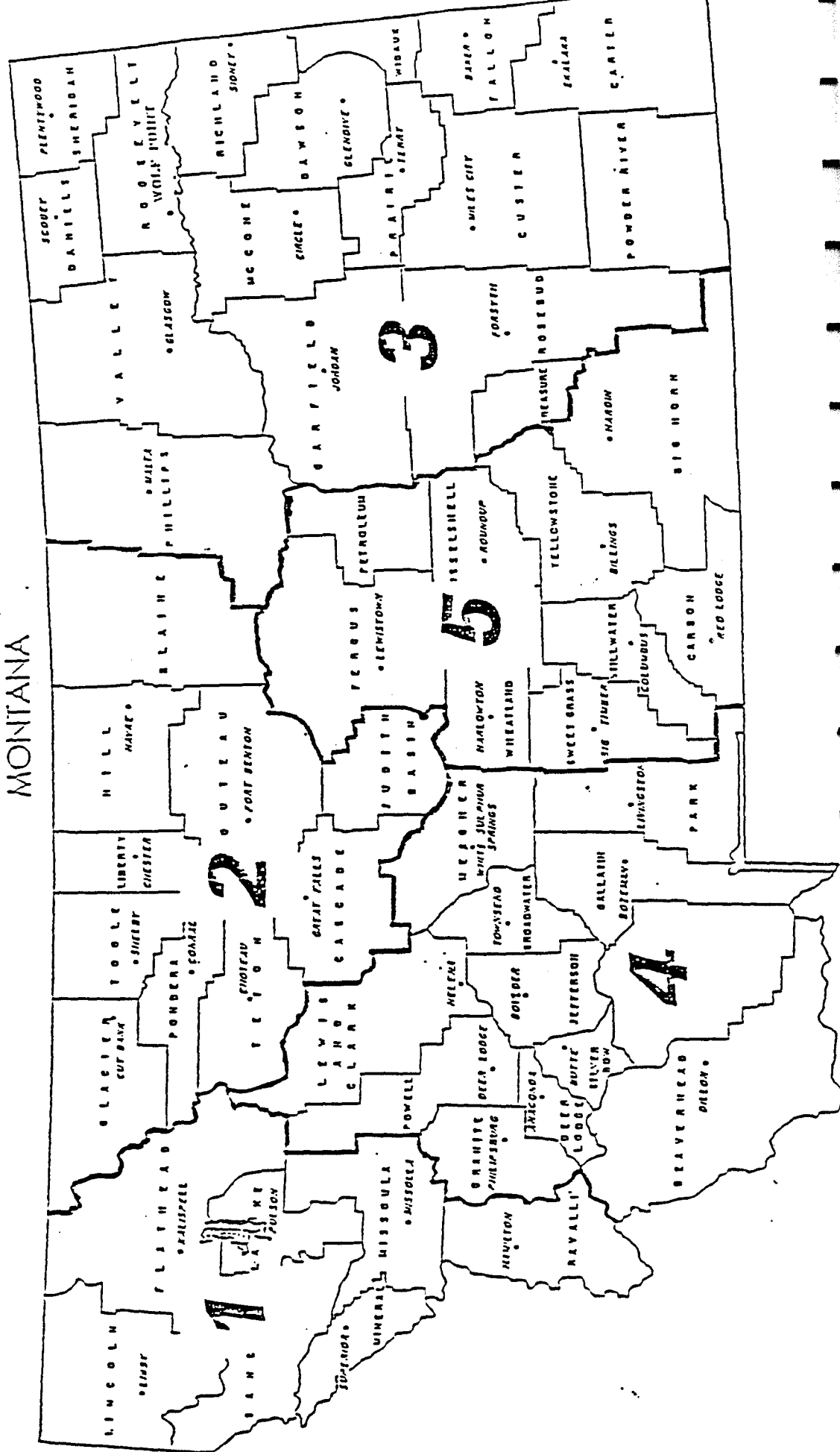
BILL NO. 413 57

There is no obstetrical care in 17 out of 56 Montana Counties.

MONTANA HOSPITAL ASSOCIATION

REGIONAL MAP

MONTANA



HB 57
4-19-89

SENATE STANDING COMMITTEE REPORT

March 18, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 57 (third reading copy -- blue), respectfully report that HB 57 be amended and as so amended be concurred in:

Sponsor: Marks (Jenkins)

1. Title, lines 10 through 13.

Following: "ACTS" on line 10

Strike: remainder of line 10 through "LOCALITY" on line 13

Insert: "GROSS NEGLIGENCE OR BY WILLFUL OR WANTON ACTS"

2. Page 2, lines 2 through 6.

Following: line 1

Strike: "AN" on line 2 through "LOCALITY" on line 6

Insert: "gross negligence or by willful or wanton acts or omissions when rendering such emergency care or assistance"

3. Page 2, line 11.

Following: "provider"

Insert: ", when the health care provider has not received compensation in any form and has no reasonable expectation of payment for the emergency services provided to the patient,"

4. Page 2, line 25.

Following: "hospital"

Insert: ", when the health care provider has not received compensation in any form and has no reasonable expectation of payment for the emergency services provided to the patient,"

5. Amend Senate Judiciary Committee amendment dated 3/14/89, as follows:

Amendment No. 5

In fourth line

Following: "provider"

Insert: ", when the health care provider has not received compensation in any form and has no reasonable expectation of payment for the emergency services provided to the patient,"

AND AS AMENDED BE CONCURRED IN

Signed 

Bruce D. Crippen, Chairman

SENATE
HB 57

SENATE STANDING COMMITTEE REPORT

page 1 of 2
March 14, 1989

MR. PRESIDENT,

We, your committee on Judiciary, having had under consideration HB 57 (third reading copy -- blue), respectfully report that HB 57 be amended and as so amended be concurred in:

Sponsor: Marks (Jenkins)

1. Title, line 13.

Following: "LOCALITY."

Insert: "PROVIDING IMMUNITY FROM LIABILITY FOR RENDERING EMERGENCY OBSTETRICAL SERVICES IN CERTAIN SITUATIONS;"

2. Page 1, line 14.

Insert: "STATEMENT OF INTENT

This legislature finds and declares that there is a crucial need for the people of this state to receive knowledgeable and experienced emergency medical care. The legislature further finds that physicians who serve on an "on-call" basis to hospital emergency rooms are frequently required to provide obstetrical care to persons with whom they have no preexisting physician-patient relationship. It is the public policy of this state to provide incentive and protection for physicians and other health care providers who, despite these hardships, respond to calls to provide emergency medical care."

3. Page 1, line 17.

Following: "emergency"

Insert: "nonobstetrical"

4. Page 1, line 18.

Following: "in"

Insert: "[section 2] and"

Following: "(1)(b)."

Insert: "of this section"

5. Page 3.

Following: line 23

Insert: "NEW SECTION. Section 2. Limits on liability for care rendered in emergency obstetrical situations in hospital or physician's office. (1) Notwithstanding the provisions of section 1(1)(a)], a health care provider who in good faith renders emergency obstetrical services to a person is not liable for any civil damages as a result of any negligent act or omission by the health care provider in rendering the emergency obstetrical services. The immunity granted by this section does not apply to acts or omissions constituting gross negligence or to willful or wanton acts or omissions.

(2) The protection of subsection (1)(a) does not apply to the health care provider in any of the following cases:

SENATE COMMITTEE ON JUDICIARY, HB 57
page 2 of 2

(a) The health care provider had provided prior medical diagnosis or treatment to the same patient for a condition having a bearing on or relevance to the treatment of the obstetrical condition that required emergency services.

(b) Before rendering emergency obstetrical services, the health care provider had a contractual obligation or agreement with the patient, another health care provider, or a third-party payer on the patient's behalf to provide obstetrical care for the patient.

(3) As used in this section, the following definitions apply:

(a) "Emergency obstetrical care" means a situation occurring either in a physician's office or a hospital that requires immediate services for the alleviation of severe pain or immediate diagnosis and treatment of medical conditions that, if not immediately diagnosed and treated, would lead to severe disability or death of either the patient or the unborn child.

(b) "Health care provider" means:

(i) a physician, registered professional nurse, licensed practical nurse, or physician's assistant, duly licensed under the provisions of Title 37; or

(ii) a hospital.

(c) "Hospital" means a licensed hospital, infirmary, or health care facility, as defined in 50-5-101.

Renumber, subsequent sections

6. Page 3, line 25.

Strike: "section"

Insert: "sections"

Following: "1"

Insert: "and 2"

7. Page 4, line 9.

Following: "1"

Strike: "and 2"

Insert: "through 3"


8. Page 4, line 12.

Following: "1"

Strike: "and 2"

Insert: "through 3"

AND AS AMENDED BE CONCURRED IN

Signed,  Bruce D. Crippen, Chairman

Statement of intent adopted.

SENATE

Williams

4/19/89

HB 57

33-6

Amendments to House Bill No. 57
Reference Reading Copy (SALMON)

For the Second Free Conference Committee on HB 57

Prepared by Valencia Lane
April 19, 1989

1. Title, line 16.

Following: "DATE"

Insert: "AND A TERMINATION DATE"

2. Page 7, line 14.

Following: "Applicability"

Strike: "."

Insert: "-- termination. (1)"

3. Page 7.

Following: line 16

Insert: "(2) [Section 2] terminates July 1, 1993."

4/19/89 9:37A

Please Sign Sheet for Minutes
Valencia Lane Legislative Council Staff
Rep. Valencia Wyatt Chair
Rep. Mary McDonald Committee member

Sen. Bob Wallace

Rep. Bob Murks, sponsor HB 57

Rep. Jim Whalen - onlooker

Lib. Alvord - Mt. Hospital Association

Donald Copelin M.D. - DHEC & Montana Health Policy

Steve Browning - Montana Hospital Assn.

Reguliner Irvell - American Insurance Association

Michael Sherwood - Montana Trial Lawyers Assn.

Frank Trivette - W.F. Mt.

4/19/89