

SENATE PUBLIC HEALTH, WELFARE & SAFETY COMMITTEE

DATE: Monday, March 11, 1991

BILLS TO BE HEARD:

House Bill 378 by Bob Pavlovich. An Act prohibiting the sale of tobacco products to minors.

House Bill 849 by Dorothy Bradley. An Act referring to a Montana school students cigarette/tobacco referendum.

House Bill 860 by Tim Dowell. An Act declaring state buildings smoke free.

BILLS AWAITING EXECUTIVE ACTION:

Senate Bill 369 by Jacobson. An act prohibiting tobacco sales to minors.

House Bill 176 by Thomas Nelson. An act increasing fees for filing or obtaining copies of documents from the county clerk.

House Bill 325 by Richard Simpkins. An act to expand hospital districts to include health care facility/education benefits.

## **MINUTES**

### **MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON PUBLIC HEALTH, WELFARE & SAFETY**

**Call to Order:** By Chairman Dorothy Eck, on March 11, 1991, at 3:20 p.m.

#### **ROLL CALL**

**Members Present:**

Dorothy Eck, Chairman (D)  
Eve Franklin, Vice Chairman (D)  
James Burnett (R)  
Thomas Hager (R)  
Judy Jacobson (D)  
Bob Pipinich (D)  
David Rye (R)  
Thomas Towe (D)

**Members Excused:** None.

**Staff Present:** Tom Gomez (Legislative Council)  
Christine Mangiantini (Committee Secretary)

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Announcements/Discussion:**

#### **HEARING ON HOUSE BILL 378**

#### **Presentation and Opening Statement by Sponsor:**

Representative Bob Pavlovich opened by saying HB 378 pertains to the prohibition of the sale of tobacco products to persons under 18 years of age. He said he had witnesses from the tobacco industry available to testify on behalf of the bill. There are restrictive laws in effect in other states. For example, there are 36 states that set a minimum age at 18 years, four states that set a minimum age at 17 years, three states that set a minimum of 16 years and one state has a local option. Only three states have no requirements. He said he has been in the tavern business for 40 years and tries to prohibit minors from purchasing tobacco products. He asked the chairman to recognize the witnesses.

Proponents' Testimony:

The first witness was Jerome Anderson, representing the Tobacco Institute. He passed the committee members copies of Exhibit #1 which explained about the bill and other similar bills introduced this session. He said HB 378 passed third reading in the House by a vote of 70 to 28. He reviewed Exhibit #1. Under Senate Bill 369 with local preemption, there could be different ordinances in each community. This would be a burden on chain store operations. Both bills attain the significant end which is the regulation, control and prohibition of the sale of the product to persons under the age of 18. Montana is only one of four states that does not provide such regulations. He requested favorable consideration of the bill.

The second witness was Mark Staples, executive director of the Montana Tavern Association and representing the Montana Tobacco and Candy Wholesalers. He said the wholesale industry delivers and sells the product and the tavern owners will be held to enforce the law and be subject to the punitive measures. He said he had studied the bills that had been introduced and said HB 378 was the fairest of the measures. The penalties in this measure are adequate to accomplish the purpose of the bill. Most wholesalers operate in multiple counties and to have to adjust distribution, monitoring and enforcement procedures each time they cross a county or city line. It is not in the best interest of efficiency. He urged favorable consideration of HB 378.

The third witness was Gene Phillips, representing the Smokeless Tobacco Council. He said he endorsed this bill.

The fifth witness was Candy Weimer, representing the Board of Crime Control. She said she was in favor of HB 378 but asked the committee to consider that there are few 'handles' probation officers have on status offenders and that this measure adds another status offense.

The sixth witness was Bill Stevens, representing the Montana Food Distributors Association. He said they supported the bill.

The seventh witness was John Delano, representing Philip Morris Corporation. He said they had a role in putting together the bill.

The eighth witness was Earl Thomas, representing the American Lung Association. He said they supported the bill in the House with some amendments. See Exhibit #2 for a copy of his testimony.

The ninth witness was Jerry Loendorf, representing the Montana Medical Association. He said 10 or 15 years ago they may not have supported this bill. Such a bill at that time may have created numerous offenders that could not be controlled. Mr. Loendorf continued by saying the knowledge of the harm of smoking has increased to such an extent that people are very aware of it.

Mr. Loendorf continued by saying a decline in the number of smokers evidences that. He said most people believe a law such as provided by HB 378 could be enforced.

### Opponents' Testimony:

The first witness to testify was Bob Moon, Montana Department of Health. He said they do not support the measure. See Exhibit #3 for a copy of his hand-out's. He said 46 states and the District of Columbia have laws similar to this and they are blatantly ignored. The state law as advocated by the tobacco industry would be ineffective in Montana. They know the results of the government study submitted by Louis Sullivan of the Department of Health and Human Services which said children can easily buy cigarettes anytime they want, even in states where the law is perceived to be relatively strict. Based upon 1200 interviews with law enforcement and public health personnel in 18 states and in 300 communities, some programs are successful and have similar features. Some of those are the licensing of tobacco vendors and revocation of licenses for violations, civil rather than criminal penalties for violators, use of stings to identify illegal sales, posting of signs at point of sale and bans and restrictions on vending machines. Those features of an are found in SB 369.

The second witness was Mike Males, representing himself. He said the measures in HB 378 are ineffective and there is some indication they may have the opposite effect of the intentions. Montana is one of four states that does not have laws prohibiting the sale of tobacco to minors. Yet Montana youth have among the lowest smoking rates in the United States, 11 percent of high school seniors smoke compared to 18 percent nationwide. Ratio of youth to adult smoking rates is lower in Montana than in other states. Minnesota has made the greatest effort to enforce the prohibition of the sale of tobacco to minors. In that state persons who sell tobacco to minors can be fined up to \$3,000 and lose their sales license. Youth are also subject to heavy penalties. Minnesota issues detailed manuals on enforcement of these laws and local jurisdictions have even stricter anti-tobacco laws. The latest survey shows 17 percent of Minnesota youth between the ages of 12 and 17 smoke cigarettes compared to only 8 percent in Montana. Smoking rates among Minnesota youth are at least 50 percent higher than Montana youth.

The third witness was Paulette Kohman, director of the Montana Council for Maternal and Child Health. See Exhibit #4 for a copy of her hand-out. She said when Mr. Anderson suggested that chain store operations would be shut down for violations it is an exaggeration. The most that would happen is that they could not sell cigarettes. She said other witnesses had said that local ordinances would inhibit the sale of products across the state. She said she doubted that would be the case. HB 378 is not a comprehensive bill, it does not address licensing the sales or keeping children from being criminals. It essentially is designed to protect the tobacco industry. She said license revocation was the answer.

The fourth witness was Representative Brent Cromley, a representative of House District 94 and a member of the House of Representatives Business Committee that heard this measure. He said the only opponent was Mike Males. The bill went through quickly with only three dissenting votes. He said he read material from the Tobacco Institute as well as materials distributed by Mike Males. In his opinion this bill would increase adolescent smoking. None of the proponents have stated why this bill should be passed. No one has said that making it a crime will decrease youth smoking in Montana. He said he researched data at Eastern Montana College and found that punitive measures tend to serve as a challenge to younger youth and may induce them to begin smoking at an earlier age. He passed to the committee Exhibit #5, an article by Penelope Eckert, MA, PhD, called "Beyond the Statistics of Adolescent Smoking".

Questions From Committee Members:

Senator Rye asked if fewer teenagers would drink if the age was lowered to 12.

Mike Males said about 9 percent of the teen-agers in Montana drink at the present time. He said he is confident about adolescents making their own decisions about such issues.

Representative Cromley said drinking is socially acceptable. It can do damage to others through excessive use. Tobacco use is primarily a matter of habit with no redeeming value.

Senator Rye said their contention is that putting a minimum age limit for the sale of tobacco products is an incentive for people under that age to smoke. He said that logic escapes him.

Representative Cromley said Montana is less than half of the national rate for youth smokers. That is the ratio of youth smokers to adult smokers. In Utah and Minnesota, the two states with the strongest anti-smoking statutes actually have among the highest ratio of youth to adult smokers.

Senator Hager asked Mr. Anderson about tobacco samples and asked if persons under the age of 18 could receive these samples.

Mr. Anderson said it is not a state law now. There is nothing in state statutes today that would prohibit the distribution of tobacco products to persons under the age of 18. There are two communities that limit tobacco sales and those are Livingston and Missoula. He said there are three bills and the line-up tells much about the support and opposition. People who oppose the use of tobacco products are people who oppose our bill, HB 378, and will support Representative Bradley's bill.

Closing by Sponsor:

Representative Pavlovich closed by saying he was disappointed in seeing the Department of Health testify against this bill especially since cigarette packages that are stamped with a warning label. He said he had a letter from a juvenile probation officer in Livingston who said they are grateful for this bill because they could enforce tobacco prohibition in the county as well. He urged the committee to pass this bill with no amendments.

HEARING ON HOUSE BILL 849Presentation and Opening Statement by Sponsor:

Representative Dorothy Bradley opened by saying she likes this measure because it has the most chance of cutting down smoking with young people. She said they already have a responsible record in this state. The right approach is to say they have shown us no reason not to trust them, so if this is an issue, let's let the young people deal with it. It would be appropriate to give them a two year period to do this. The content of the bill allows a vote of 7th through 12th graders sometime next fall sponsored by the Office of Public Instruction. In that referendum it would be requested that they vote about the sale of tobacco products to minors. If the vote carried to request retailers not to sell tobacco products then on a voluntary measure, the retailers would post a sign which said they respected the wishes of the junior and senior high school students. She said there are two main questions. First, does prohibition work with youth. The statistics show this is not effective. The second question is how do we discourage smoking. Self-education, debate in the schools, editorials, pressure from peers and deciding yourself is the type of program that works. She said this bill was modeled after a program in the Bozeman schools. Almost 90 percent of the students turned out to vote and 80 percent voted for smoke-free schools. She asked the chairman to recognize the witnesses.

Proponents' Testimony:

The first witness was Jack Kopp, Deputy Superintendent of the Office of Public Instruction. As adults we believe we know what is right and wrong for our young people and are quite willing to verbalize that. The most convincing voice is that of young people. That is what this bill addresses. He said they supported this bill.

The second witness was Mark Staples, executive director of the Montana Tavern Association and representing the Montana Wholesaler Candy and Tobacco Association. He said this is a terrific idea but contradictory to what the committee just heard which was implied that to restrict tobacco to minors, the logic is that it will not work because of reverse psychology.

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The third witness was Jerome Anderson, representing the Tobacco Institute. He said they have no problem will allowing children to vote on this issue. He suggested that to allow this to rest on a student vote with no other regulation would be to leave the gate wide open for local ordinance activities. Those passed in Montana have been done in the last several years. This would result in a hodge-podge of regulation throughout the state. He urged the committee to pass the Bradley bill and another bill such as HB 378 or SB 369 which would provide a prohibition against the sale and distribution of tobacco products to persons under the age of 18.

The fourth witness was Representative Tim Dowell, House District 5 in Kalispell. He said he teaches in a middle school and has taught junior high school youth for about 15 years. He said he called his school at lunch time and took an informal poll. The results were 45 to 3 to ban tobacco products.

The fifth witness was Jed Smith, an eighth grader at Helena Middle School. He said this bill would let kids in Montana vote on whether or not stores should sell cigarettes and tobacco products to persons under 18 years of age. He said he is in favor of the bill because kids will cast an intelligent vote, they know what is going on in the world. Kids know that tobacco products cause cancer and heart disease and that thousands of people die every year from cigarettes. He said they are hoping to have a smoke free Montana by the year 2000. He said it would be better to ask retailers not to sell tobacco products to kids instead of passing a law. He said he does not like too many rules and adults do not like too many laws, especially ones with fines and penalties. This bill would give kids a chance to educate society and would be a good exercise in citizenship. He urged the committee to vote in favor of this bill.

The sixth witness was Ann Volinkaty, a senior at Hellgate High School in Missoula. This city has an ordinance and has a high percentage of kids smoking. If you walked into Missoula you would have no idea there was a city wide ordinance in effect. Many kids smoke. This choice is not a legal question for kids but a moral and ethical question. It has nothing to do with where cigarettes can be purchased. HB 378 is a public relations bill. HB 849 is an educational bill that has more of a chance of having an effect. Kids are aware that smoking is bad. This happened through education.

The seventh witness was Mike Males, representing himself. He passed to the committee Exhibit #6. He said he was the only opponent to HB 378. He said this bill is not a cute idea to hold a frivolous election for kids. HB 849 is a serious proposal to reduce tobacco use among Montana teen-agers in the most effective manner possible which is by permitting students to make their own collective decision and apply the pressure from that decision to youth in the initial stages of deciding whether to smoke. Punitive laws against smoking by minors do not work. If the vote was held in the same manner as in Bozeman the cost would be about \$150.00 to print and a similar amount for postage.

Mr. Males continued by saying it should cost about \$500.00 total. He suggested that law enforcement procedures do not work. The high vote against tobacco in the Bozeman school resulted in allowing students to make the decision. They deserve a serious opportunity to make this decision. You cannot have both a mandatory and a voluntary approach to this issue.

The eighth witness was Paulette Kohman, director of the Montana Council of Maternal and Child Health. She said when she heard of this in Bozeman she thought it was ridiculous but the more she learned about it she realized children are sometimes wiser than adults. We may be lead into a smoke free society by our children.

The ninth witness was Charles Brooks, executive vice-president of the Montana Retail Association. See Exhibit #7 for a copy of his testimony. He said they support this measure and that this is a reasonable approach to the problem. The responsibility in retailing is the critical issue and please give retailers the opportunity to prove their ability to control the sale of tobacco to teen-agers. He said he is opposed to teen-agers buying, acquiring and using all types of tobacco.

#### Opponents' Testimony:

The first witness was Representative Bob Pavlovich, House District 70. He said he was neither an opponent nor a proponent but said he thought the committee should amend the bill to include alcohol.

#### Questions From Committee Members:

Senator Burnett asked Representative Bradley why we needed this law.

Representative Bradley said this was not a law. The purpose was to promote education and that the school vote in Bozeman worked so well that it was worth the effort.

Senator Burnett asked why this measure was not a joint resolution.

Representative Bradley said it was not her intent to urge someone to do this but thought it should actually take place. She continued by saying they have worked with the Office of Public Instruction and have their full support.

Senator Pipinich said by the middle of 1991 AID's patients in the United States will number almost 3 million, alcoholism is starting in the fifth and sixth grades, suicides are on the rise, cocaine and crack use is increasing and yet the smoking industry is taking the rap. He said we cannot get a bill through the senate for legalized abortion. He said he thinks we should concentrate on these problems instead of the smoking bills.



Senator Rye said because of the University setting in Bozeman the referendum would probably have a different outcome than if it were given in other parts of the state.

Representative Bradley said she thought that was wrong. She said she hoped the committee members read the USA TODAY article on the two Montana college students who were chosen for the academic team and many other Montana students placed as well. She said people wondered by Montana students were performing so well. The rural nature, emphasis on small schools, families caring about how schools function, a high work ethic. Many large corporations are recruiting Montana students for jobs because of their positive attitude toward working. She asked why we should penalize our students when their record is the best in the country.

#### Closing by Sponsor:

Representative Bradley closed by thanking the committee for a good hearing.

#### HEARING ON HOUSE BILL 860

#### Presentation and Opening Statement by Sponsor:

Representative Tim Dowell opened by asking what we are doing in our society to curb the use of cocaine and crack which are very harmful to our society. He asked about AID's, heroine and other problems. He held up a chart which showed that smoking kills more people than any of the other problems combined. He said we hear more at the national level about cocaine and crack than tobacco use. He said this bill was not really about smoking. It only says that people who do not smoke should not be subject to the effects in public buildings. He said he walked around the Capitol complex and checked with the different agencies and found out that the majority of buildings have pretty good conditions. A few buildings have no consistent smoking policies. He passed the committee members copies of Exhibit #8 and talked about passive smoke inhalation. He said he breathes much smoke while performing his duties as a public servant and said he wished he did not have to inhale the smoke. He said the bill makes it policy in the state of Montana that public buildings are smoke free. Secondly, that all state buildings have a spot for smoking. It was amended in order to pass it out of the House committee. He said the only reason a bill like this would fail is if someone does not believe that smoking is dangerous. He asked the committee a simple question, do you believe smoking causes lung cancer.

#### Proponents' Testimony:

The first witness was Paulette Kohman, director of the Montana Council of Maternal and Child Health. She said in Montana most buildings are funded from the Long range building program which is financed in part by cigarette taxes.

Ms. Kohman continued by saying the opponent's argument is that they build them, they should be able to pollute them. If citizens have to enter public buildings to conduct their work they have the right not to be assaulted by smoke. Second hand smoke is dangerous and causes death as well.

The second witness was Dave Davidson, representing the Montana University System. He said they support the bill but have a concern. He looked at the bill about fifteen minutes before the hearing. The university system does not have the same authority as the school districts or community colleges in making entire buildings smoke free. Their may be a dilemma. By the design of the bill a smoke free building is defined to be one with a designated smoking area. There are a number of buildings on campuses that are smoke free by design or because of the use of the building. This needs to be addressed in the bill.

The third witness was Liter Spence, representing himself. See Exhibit #9 for a copy of his testimony.

The fourth witness was Earl Thomas, representing the American Lung Association. See Exhibit #10 for a copy of his testimony.

The fifth witness was Jim Jensen, representing the Environmental Information Center. He said they support any pollution control legislation.

The sixth witness was Stan Bradshaw, lobbyist. He said there is much smoke in the Capitol hallways and said he was in favor of the bill.

The seventh witness was Mike Males, representing himself.

#### Opponents' Testimony:

The first witness to testify was Jerome Anderson, representing the Tobacco Institute. The current statute provides that people in charge of individual state buildings shall arrange non-smoking and smoking areas in convenient places. He said HB 860 restricts against providing for smoking areas in virtually all of the building. It does not leave much location for a smoking area to be established. He said he understands the concern of the state of air quality in the Capitol building. There is passive smoke, but he does not understand how anyone could regulate the Capitol building because of the citizens from out-of-town coming in to testify on bills. People cite statistical information with regard to passive smoke. The last Surgeon General stated in a report that there was no scientific basis for the conclusions reached upon assumptions with regard to passive smoke. The Tobacco Institute does admit that there is a correlation between health issues and the use of tobacco products. The legislature and the people of Montana cannot have it both ways. If the tobacco industry pays for the facilities that this state uses it is only logical that those people have an opportunity to practice a personal right. He said they feel the present statute is adequate to take care of the problems.

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The second witness was Susan Meyer, representing herself. See Exhibit #11 for a copy of her hand-out. She said smoking is a social condition and the Constitution of the United States prohibits discriminating against anyone with a social condition. The U.S. government supplies and transports cigarettes to soldiers.

Questions From Committee Members:

Senator Pipinich asked about the chart Representative Dowell used during his opening statements.

Representative Dowell said the chart was given to him by the American Lung Association. He said the chart depicted statistics on a national level.

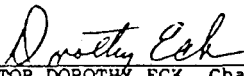
Senator Jacobson said she handed out the same chart during her presentation.

Closing by Sponsor:

Representative Dowell closed by saying he did not know of anyone acquiring problems from passive alcohol consumption. He said he received a letter from a constituent that said there were many provisions for the handicapped at the state Capitol but none for those with asthma or emphysema (exhibit #12). Since 1989 there have been over 130 documented medical articles connecting passive smoke with lung disease. He left with the committee a copy of the Montana constitution (exhibit #13).

ADJOURNMENT

Adjournment At: 5:20 p.m.

  
SENATOR DOROTHY ECK, Chairman

  
CHRISTINE MANGIANTINI, Secretary

DE/cm

ROLL CALLPUBLIC HEALTH, WELFARE  
AND SAFETY

COMMITTEE

Date 3/11/91

NAME	PRESENT	ABSENT	EXCUSED
SENATOR BURNETT	X		
SENATOR FRANKLIN	X		
SENATOR HAGER	X		
SENATOR JACOBSON	X		
SENATOR PIPINICH	X		
SENATOR RYE	X		
SENATOR TOWE	X		
SENATOR ECK	X		

Each day attach to minutes.

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 11<sup>th</sup> day of June, 1991.

Name: Victor Anderson

Address: 1 Wilson St.

Telephone Number: 1/49-318

Representing whom?

Tobacco Institute

Appearing on which proposal?

HB - 378

Do you: Support? ☒ Amend? ☐ Oppose? ☐

Comments:

see continued in written testimony  
present

COMMENTS OF PROPONENTS OF HOUSE BILL 478

H.B. 378 is proposed and supported by the Tobacco Industry in Montana in realization of the fact that Montana is one of only four states of the 51 states and the District of Columbia that does not have any restriction on the sale of tobacco products to minors. The Tobacco Industry has conducted and is conducting an active national campaign to support restrictions on the sale of tobacco products to those under 18 years of age, and this legislation is offered in Montana to further that effort.

Restrictive laws are in effect in other states as follows:

- Three states set a minimum of age of 19 years.
- Thirty-six states set a minimum age of 18 years.
- Four states set a minimum age of 17 years.
- Three states set a minimum age of 16 years.
- One state allows local option.

H.B. 378 not only covers the sale of cigarettes but also the sale and "sampling" of all tobacco products. The legislation would prohibit the sale of tobacco products or distribution of samples of tobacco products to those under 18 years of age.

H.B. 378 prohibits the distribution of samples of tobacco products within 500 feet of a center of youth activity.

H.B. 378 limits places where tobacco products may be sold through vending machines to:

- (a) factories, businesses, offices, and other places not open to the general public;
- (b) places to which persons under 18 years of age are not permitted access;
- (c) places where alcoholic beverages are offered for sale; and
- (d) places where the vending machine is under the supervision of the owner or an employee of the establishment.

H.B. 378 provides civil penalties for the knowing or purposeful retail sale or distribution of a tobacco product in violation of the act or failure to request proof of age as required by the act as follows:

\$100 for the first conviction;

\$500 for a conviction preceded by a conviction within the past 365 days; and

\$1,000 for a conviction preceded by two convictions within the past 730 days.

If a sale in violation of the act is made through a vending machine, the owner of the establishment in which the vending machine is located is guilty of an offense punishable by a penalty not to exceed \$100, except that if the owner has made an employee

responsible for supervising the vending machine, the employee is guilty of the offense and is punishable by the same penalty unless the owner ordered or knowingly allowed the sale.

H.B. 378 requires that notice of the 18-year-old sale prohibition must be displayed in the establishment where tobacco products are sold, as well as on each vending machine located in the establishment. The penalty for violation of this part of the act is \$200.

H.B. 378 provides for uniformity of the law throughout the state by providing for state preemption.

We would appreciate your support of H.B. 378

Jerome Anderson  
Representing The Tobacco Institute

Mark C. Staples  
Representing The Montana Association  
of Tobacco and Candy Distributors

John Delano  
Representing Phillip Morris Ltd.

Roger W. Tippy  
Representing R.J. Reynolds

Gene Phillips  
Representing The Smokeless Tobacco Council

DIFFERENCES BETWEEN SB 369 AND HB 378Licensing

Tobacco retailers are now required to obtain a retail license (Section 16-11-120 and Section 16-11-122, MCA). The license fee for a retailer of tobacco products is \$10. This license requirement also covers vending machine operators. SB 369 provides that the retailer and vending machine operators obtain a license. This requirement is not necessary because such licenses are now required.

Sales To and Purchases by Minors

Both HB 378 and SB 369 prohibit sales of tobacco products to minors under the age of 18.

Only HB 378 makes it unlawful for a minor to purchase or receive a tobacco product or sample.

Distribution of Samples to Minors

HB 378 prohibits distribution of "samples" of tobacco products to those under 18. SB 369 does not contain any such prohibition.

HB 378 also makes it illegal for distributors to distribute samples of tobacco products in or on any public park, street, or sidewalk within 500 feet of the center of youth activities. SB 369 does not address this matter.

Vending Machines

HB 378 limits the places where tobacco products may be sold through vending machines to specific locations and areas.

SB 369 does not address the location of vending machines.

Signage

Both HB 378 and SB 369 require posting of signs stating that sales of tobacco products to minors is illegal.

Persons Responsible

SB 369 would charge the person making the sale of a tobacco product to a minor with the violation and would penalize such person. The license holder would not be held responsible if the sale was without the knowledge of the license holder and if the license holder could show that he had a system in place to prevent such sales.

HB 378 would also hold the person making the sale or distributing the sample responsible. The employer would not be held responsible unless the sale or distribution of the tobacco product was ordered



or knowingly allowed by the employer. HB 378 would make the owner of an establishment where vending machines are located responsible for a sale to minors through a vending machine unless that owner has made an employee responsible for supervising the machine. In that case, the employee would be responsible unless the owner ordered or knowing allowed the sale.

### Identification

HB 378 defines a driver's license or other generally-accepted means of identification that contains a picture of the individual and that appears on its face to be valid as proof of age. It further provides that the seller must require proof of age from a prospective purchaser or recipient if an ordinary person would conclude, on the basis of appearance, that the purchaser may be under 18. Reasonable reliance upon proof of age and a reasonable belief that a person appears to be 18 are defenses to prosecution.

SB 369 provides that if there is a reasonable doubt as to the purchaser's age, the seller shall require presentation of a driver's license or other generally-accepted identification that includes a picture of the purchaser.

### Prosecution of Minors

HB 378 provides that minors who violate the act may be prosecuted under the "Montana Youth Court Act."

SB 369 makes no provision for prosecution of a minor since it contains no restrictions against the purchasing of tobacco products by minors.

### Penalties

Both bills provide for civil fines and dollar amounts with the amounts of the fines increasing for more than one violation within specified periods of time.

SB 369, however, is more punitive in that it calls for license suspensions for periods up to 18 months depending upon the number of violations within specified time periods.

SB 369 also provides that if civil penalties are imposed for three or more violations at each of three or more premises under common ownership or control, all licenses issued to all premises under that common ownership shall be suspended for a period of 9 to 18 months. Such provisions would affect such chains as Buttreys, Safeway, Albertson's, convenience store chains, Town Pump, and more.

HB 378 does not contain such punitive provisions.

Presentation

HB 378 provides for uniformity of the law throughout the state by stating that a local government, including one with self-governing powers, may not regulate sales of and distribution of samples of tobacco products to minors.

SB 369 would allow a local government, by ordinance, to adopt regulations on sales of tobacco products to minors which regulations are more stringent than the state act.

This provision in SB 369 would result in a hodgepodge of local laws on the subject.

Conclusion

We believe that SB 369 is unreasonably punitive in its provisions regarding license suspension.

We believe that SB 369, by not addressing the matter of sampling, and not addressing the supervision at all of vending machines, omits necessary provisions.

We respectfully submit that HB 378 provides the more reasonable and consistent approach to the matter of sales and distribution of tobacco products to minors and urge your support of HB 378 and rejection of SB 369.

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Jerome Anderson  
Representing the Tobacco Institute

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Mark C. Staples  
Representing The Montana Association of  
Tobacco and Candy Distributors

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John Delano  
Representing Phillip Morris Ltd.

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Roger W. Tippy  
Representing R.J. Reynolds

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Gene Phillips  
Representing The Smokeless Tobacco Council



# AMERICAN LUNG ASSOCIATION OF MONTANA

Christmas Seal Bldg. — 825 Helena Ave.  
Helena, MT 59601 — Ph. 442-8556

EARL W. THOMAS  
EXECUTIVE DIRECTOR

SENATE HEALTH & WELFARE

EXHIBIT NO. 2

DATE 3/11/91

H BILL NO. 378

TO: MEMBERS OF SENATE PUBLIC HEALTH COMMITTEE

FROM: EARL THOMAS, EXECUTIVE DIRECTOR  
AMERICAN LUNG ASSOCIATION OF MONTANA

DATE: MARCH 11, 1991--3 P.M. ROOM 410

SUBJECT: HB 378--RESTRICT SALES OF TOBACCO TO MINORS

THE AMERICAN LUNG ASSOCIATION OF MONTANA SUPPORTS HB 378 BECAUSE IT WILL RESTRICT THE SALE OF TOBACCO PRODUCTS TO MINORS. EVEN THOUGH IT WILL NEED REVISING IN THE FUTURE.

THERE ARE PROVISIONS IN SENATE BILL 369 SPONSORED BY SENATOR JUDY JACOBSON THAT WE HOPE YOU WILL CONSIDER INCORPORATING INTO THIS BILL:

1. LICENSE FOR RETAIL SALE OF TOBACCO
2. PENALTY ON SELLER NOT BUYER

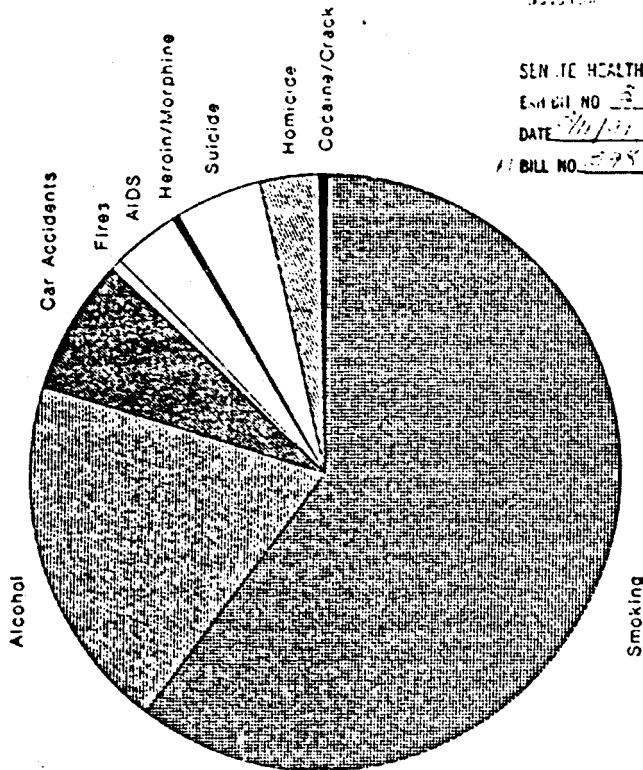
WE FEEL STRONGLY THAT SECTION 5 IN SENATE BILL 369 SHOULD REPLACE SECTION 4 OF HB 378.

THE PREEMPTION CLAUSE IS PUT IN SPECIFIC <sup>ally</sup> BY THE TOBACCO INDUSTRY TO WEAKEN THE LEGISLATION FOR THE FOLLOWING PURPOSES.

1. PRECLUDE FURTHER EFFORT AND EXPENSE ON THEIR PART TO OTHER LOCATIONS.
2. ENLIST TRADITIONAL OPPONENTS OF CLEAN INDOOR AIR LEGISLATION AS SUPPORTERS OF THEIR WEAKER BILLS.
3. KEEP STRICTER LOCAL LAWS FROM BEING PASSED IN THE FUTURE.

WE ASK TO KEEP THE DOOR OPEN TO LOCAL OPTIONS BY ELIMINATING THE PREEMPTION CLAUSE BEFORE GIVING A "DO PASS" RECOMMENDATION ON HB 378.

# Smoking Kills More Americans Annually Than All of These COMBINED



## APPROXIMATE NUMBER OF DEATHS:

Smoking	390,000 <sup>1</sup>
Alcohol (including drunk driving)	125,000 <sup>2</sup>
Car Accidents (including drunk driving)	47,000 <sup>3</sup>
Fires	4,000 <sup>4</sup>
AIDS	23,000 <sup>5</sup>
Heroin/Morphine	2,400 <sup>6</sup>
Suicide	31,000 <sup>7</sup>
Homicide	21,000 <sup>8</sup>
Cocaine/Crack	3,300 <sup>9</sup>

<sup>1</sup>1989 Surgeon General's Report, 1985 data

<sup>2</sup>Surgeon General's Office, 1985 data

<sup>3</sup>National Safety Council, 1989 data

<sup>4</sup>Centers for Disease Control, 1989 data

<sup>5</sup>National Center for Health Statistics, 1987 data

SENATE HEALTH & WELFARE

EXHIBIT NO. 2

DATE 7/1/91

BILL NO. 378

## Fact Sheet

### The Problem:

- 1,500 Montana residents die prematurely each year from the effects of tobacco use.
- 90% of adult smokers started smoking as children or adolescents, 60% by age 16.
- Each day, more than 3,000 American teenagers start smoking.
- The U.S. Surgeon General has stated that tobacco is as addictive as heroin or cocaine.
- Smoking kills more Americans each year than alcohol, cocaine, crack, heroin, homicide, suicide, car accidents, fires, and AIDS combined.
- Montana is one of only five states that does not prohibit the sale of cigarettes and other tobacco products to minors.
- Only consumer product, when used as intended, kills!!

### Key Features:

- create a licensing system under which the store may sell tobacco to adults only if it avoids making sales to minors. Signs stating that sales to minors are illegal would be required at all points of sale.
- provide separate penalties--monetary fines and license suspensions--for illegal sales so that owners and employees face punishment proportionate to their violation of the law.
- rely primarily on state administered civil penalties to avoid the time delays and costs of the court system, but allow use of local courts to assess fines, similar to traffic enforcement.
- ban the use of vending machines to dispense cigarettes.
- set the age of legal purchase at 18.
- minimize burdens on retail outlets, as requiring identification only for those who are not clearly above the age of 18, allowing driver's license as proof of age, and setting a nominal penalty for the first violation.

Advantages:

- a decrease in smoking related diseases resulting in lower medical costs to society.
- decreasing the availability of a highly addictive product to children.
- prevents youngsters from becoming addicted adults and becoming a medical burden to society.

Issues:

- where state and local officials take their responsibilities seriously, and devise enforcement tools which are workable and effective, these laws can be effectively enforced.
- elimination of this addictive substance will do a great deal to enhance the length and quality of life in Montana.
- the primary purpose of a statewide tobacco control law is to set minimum public health standards that local governments can enforce and improve upon. To do otherwise would strip localities of their long cherished ability to protect their citizens from serious public health threats. Local governments should have the ability to enact additional measures if needed to stop the sale of tobacco products to persons under 18 years of age.
- vending machines are an open invitation for children to experiment with tobacco products. Tobacco vending machines should be restricted to places where children are prohibited from entering.

Table 1. Summary of current state laws restricting minors' access to tobacco products.

STATE	Minimum age for sale or possession	Prohibits sale of tobacco products to minors	Prohibits resale distribution of tobacco to minors	Requires signs posted at point of sale	Penalties (Fine and/or imprisonment)	Requires retail cigarette and/or tobacco license	Enforcement provisions	Prohibits cigarette vending machines accessible to minors
Alabama	19a	Xa	X	-	b	X	-	-
Alaska	19a	X	X	-	b	X	-	X
Arizona	18a	X	X	-	f	-h	-	-
Arkansas	18	X	X	-	b	X	-	-
California	18a	X	X	X	b	-	-	-
Colorado	18	X	-	-	f	-	-	-
Connecticut	18	X	X	-	f	X	-	-
Delaware	17	X	X	-	b	X	-	-
Dist. of Col.	18	X	X	-	b	X	-	-
Florida	18	X	X	-	b	-	Xc	-
Georgia	17	X	X	-	f	X	-	-
Hawaii	18	X	X	-	f	-h	-	-
Idaho	18a	X	X	-	b	-	-	X
Illinois	18a	X	X	X	f	-h	-	X
Iowa	18	X	X	-	b	X	Xc	-
Kansas	18a	Xa	X	-	b	X	-	-
Kentucky	-	-	-	-	-	-	-	-
Louisiana	-	-	X	-	-	-	-	-
Maine	18a	X	X	X	f	-	-	X
Maryland	18	X	X	-	b	X	-	-
Massachusetts	18	X	X	X	f	X	-	-
Michigan	18a	X	X	X	b	-	-	-
Minnesota	18a	X	Xg	-	b	-	-	-
Mississippi	18	Xa	X	-	b	-	-	-
Missouri	-	-	-	-	-	-	-	-
Montana	-	-	-	-	-	X	-	-
Nebraska	18a	X	X	-	b	-h	Xc	-
Nevada	18	X	X	-	f	-	-	-
New Hampshire	18a	X	X	X	f	X	-	-
New Jersey	18	X	X	-	f	X	-	-
New Mexico	-	-	-	-	-	-	-	-
New York	18	X	-	X	b	-	-	-
North Carolina	17	X	X	-	b	X	-	-
North Dakota	18a	X	X	-	b	X	-	-
Ohio	18	X	X	X	b	X	-	-
Oklahoma	18	Xa	X	-	b	X	Xc	-
Oregon	18	X	X	-	b	-	-	-
Pennsylvania	18	Xa	X	-	b	X	-	-
Rhode Island	18a	X	X	X	f	X	-	-
South Carolina	18	X	X	-	b	-h	Xc	-
South Dakota	18a	X	X	X	f	-	-	-
Tennessee	18a	Xa	X	X	b	-	X	-
Texas	18	X	X	X	f	-	-	-
Utah	18a	X	X	-	b	X	-	X
Vermont	17	X	X	X	f	-	-	-
Virginia	18a	X	-	-	-	-	-	-
Washington	18	X	X	-	b	X	-	-
West Virginia	18a	X	X	-	f	-	Xc	-
Wisconsin	18	X	-	X	f	-h	-	-
Wyoming	-	-	-	-	-	-	-	-

- a- Applies only to cigarettes  
b- Both jail or fine; f- fine.  
c- Provisions to encourage minors to divulge source of tobacco.  
d- Provides a bounty to informers.  
e- Provides that it is not entrapment to send a minor into a store.  
f- Prohibits possession of tobacco by minors.  
g- Prohibits all free distribution of tobacco.  
h- No license required on prepackaged cigarettes.  
i- Licensing is done at the local level.  
j- Provides for license revocation.  
k- Only vending machines need to be licensed.

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 11 day of March, 1991.

Name: Paulette Kahan

Address: 2030 11th Ave #10

Helena

Telephone Number: 443-1674

Representing whom?

MT Council for Maternal & Child Health

Appearing on which proposal?

HB 378

Do you: Support? ☐ Amend? ☐ Oppose? ☒

Comments:

This bill does not have enough  
teeth for enforcement against sellers  
in the form of license revocations & suspensions  
② contains criminal penalties for  
minors while including virtually  
no penalties for retailers and placing  
the bulk of penalties on retail clerks  
whose jobs may depend on "making the sale"  
while they have no say in store policy.  
③ preempts local ordinances, some of  
which have been on the books for years  
and which are generally recognized as  
the most effective means of reducing sales.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY





## Doctors Ought to Care

1227 S. Higgins, Missoula, Montana 59801

SENATE HEALTH & WELFARE  
EXHIBIT NO. 4  
DATE 3-11-91  
BILL NO. H13 27 P

March 11, 1991

Montana State Legislature  
Senate Committee  
Helena, Montana

Dear Senators:

Tobacco remains the leading cause of preventable death in Montana, so legislation dealing with tobacco sales to minors is an important health issue. While it would seem desirable to have Montana join the ranks of states banning sales to minors, this law will accomplish little without an enforcement mechanism. The clause in the current bill which prohibits municipalities from banning minors sales should be deleted. Our local city bill banning minors sales in the city of Missoula is a useful tool in our community and I feel that it should be left intact.

I think it is most important that the Senate provide funding that would make any tobacco legislation meaningful rather than just a law on the books. Thank you for considering my point of view and for taking tobacco seriously.

Sincerely,

Judy McDonald, M. D.  
Missoula Doctors Ought to Care

JM/mg

PENELOPE ECKERT, MA, PhD

EXHIBIT NO. 45

DATE 3/11/81

1 BILL NO. 378

**Abstract:** Statistical studies can identify the demographic characteristics of the adolescent smoking population but cannot reveal how clusters of demographic categories combine in the culture of the community to form salient social categories, or how social processes link these categories to smoking and smoking-related behavior. Because smoking and smoking-related behavior function as a key social symbol, anti-smoking campaigns that are based on an inaccurate understanding of the social context in which smoking occurs can

reinforce this behavior. Participant observation in a suburban high school suggests that adolescents begin smoking as part of a complex symbolic process growing out of the process of social differentiation between future members of the working class on the one hand and the middle class on the other. It points out inadequacies in two existing anti-smoking programs in the schools that result from ignoring the social dynamics of smoking. (*Am J Public Health* 1983; 73:439-441.)

Any smoking intervention program must be based on knowledge of who is being addressed and what social functions smoking has for them. Statistical studies have roughly identified the adolescent smoking population as children of non-high school graduates, and as nonparticipants in school sports, activities, and academics.<sup>1,2</sup> These findings must be interpreted in the light of additional, qualitative information to understand which specific aspects of the social identities of that population are associated with, or expressed by, smoking.

The following discussion is based on one year of participant observation in a high school, and on hour-long taped interviews with over 200 students in that school, covering a variety of aspects of adolescent life, including substance use. A random sample was used as the point of departure of a network study, and all major social groups in the school are represented. The corpus of interviews represents 30 per cent of the population of one graduating class.<sup>3</sup>

## Smoking and Adolescent Social Categories

Sociological studies have consistently found a socioeconomic division in schools, wherein those who participate in and dominate school activities tend to come from the upper end of the local socioeconomic continuum.<sup>4-6</sup> The demo-

graphic studies of smoking mentioned above come up with the same correlation, finding that high school smokers are from lower socioeconomic families and do not participate in school activities. In the high school represented in this discussion, this division exists; in fact, the two social categories are highly polarized. In late elementary school, each class of students begins a process of intense differentiation into two social categories based on distinct and frequently conflicting sets of needs, interests, and aspirations. One category, consisting predominantly of students from middle-class homes, regard high school as necessary and sufficient preparation for the next stage of their lives—college. Insofar as their aspirations require the continuing sponsorship of adults and the adult institution of the school, they center their lives around school and school activities. Careful not to alienate these sponsors through direct challenge of adult prerogatives, these young people exercise their emerging adult identities through the performance of adult-like roles within the school and its activities. People in this category are referred to in this and in many schools as "Jocks", but in other localities and other eras they might be called "Joe Collegers", "Collegiates", "Frats", "Preppies", or "Socialites". Opposed to the Jocks are students, largely from working-class or lower-middle-class homes, who generally consider school inadequate and unnecessary preparation for the jobs they aspire to upon graduation. They are more oriented to neighborhood than to school ties, and feeling that the school has little to offer, reject its hegemony and express their emerging adult identities through claim to more immediate adult prerogatives. These people are called "Burnouts" in this and many other schools; in other times or other places, they may be called "Hoods", "Greasers", "Stoners", or "Freaks". While many people in the school do not consider themselves Jocks or Burnouts, virtually all members of the adolescent population measure their behavior

<sup>1</sup>The primary purpose of this field work was a quantitative study of the spread of linguistic change in the adolescent population.

Address reprint requests to Dr. Penelope Eckert, Department of Anthropology, University of Michigan, 1034 LSA Building, Ann Arbor, MI 48109. This paper, submitted to the *Journal* August 31, 1981, was revised and accepted for publication October 13, 1982.

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for in terms of the Jock-Burnout opposition. These two categories define the extremes of behavior in the school, and individuals recognize that adoption of various traits, particularly smoking, places them in the continuum between the two extremes.

The terms "Jock" and "Burnout" are used by the students themselves, and are not considered derogatory by the students to whom they are addressed. The terms refer to both sexes, and are far broader than their references to sports or drugs would suggest. Jocks and Burnouts are distinguished by a wide variety of traits such as dress (Burnouts wear bell-bottomed jeans and rock concert tee-shirts whereas Jocks dress "preppy"); participation in school activities (Jocks do, Burnouts do not); academic programs (Jocks take college preparatory courses, Burnouts take vocational courses); drugs (Burnouts use them relatively openly, Jocks do not); and cigarette smoking (Burnouts do, Jocks do not). The list of traits goes on to include such things as territory, language, musical tastes, demeanor, and interests. A large portion of overt behavior is governed by social category affiliation, and each category puts a good deal of energy into maintaining and elaborating its differences from the other.

Smoking is a key symbol,<sup>6</sup> a basic term in the oppositions that set Burnouts and Jocks apart. In fact, while the categories of "Jock" and "Burnout" are named for an interest in sports and drugs, respectively, smoking is a clearer defining trait. Many students define Burnouts as "the people who smoke (cigarettes)" and it appears that a more accurate statement would be that Burnouts are the people who *have* to smoke. For all the force of socialization, of adolescent identity, and of sanctions in the school system itself conspire to make Burnouts smoke, and to keep Jocks from smoking. As a common form of adult exploration among elementary school children, smoking is a ready-made symbol of adult status. Smoking clearly begins its symbolic career as Burnouts lay claim to adult status in sixth and seventh grades, and its original significance derives almost entirely from adult authority. But as differences in relation to adults and the adult institution of the school begin to create social divisions among youths, smoking acquires significance in relations among youths. Those who lay early claim to the adult prerogative of smoking sport cigarettes as evidence of this claim; those who accept adult hegemony both avoid and actively reject smoking. As these two categories polarize, the symbolic value of smoking increases, until one could almost say that Jocks do not smoke because the Burnouts do, and the Burnouts smoke because the Jocks do not.

The symbolic value of cigarette smoking is apparent to even the most casual observer: dramatic craving gestures frequently serve as greetings, and exchange of cigarettes is an important gesture of solidarity. Sharing is a common way of solidifying ties within social groups, and Burnouts share a variety of possessions and commodities such as cars, clothing, and information, with an intensity that Jocks do not show. Cigarette sharing is particularly intense, and frequently purely symbolic: cigarettes are often given but not smoked until later. The solidaristic function of cigarette sharing is no

doubt enhanced by the fact that what is being shared is a defining Burnout commodity. The status of cigarette smoking as a more widespread Burnout trait is confirmed by the regularly employed strategy of offering or requesting cigarettes to establish trust with strangers.

Social polarization and its accompanying set of symbols accounts for the force behind the Burnouts' smoking and the Jocks' abstinence. But it is important to consider a basic difference in the status of the two. While the Burnouts' behavior is based on a sense of continuity between their lives in high school and their lives after graduation (and their denial of the school's hegemony is a result of this), high school represents for the Jocks only a temporary world. The Jocks' abstinence is symbolic only within the high school context. A few Jocks do smoke away from school, and say categorically that they would never smoke in or near school, or at a school function. Some Jocks begin to smoke as they approach graduation, as they grow slightly cynical about the high school social order, and some do not discount the possibility that they will smoke in college, where the symbolic value of smoking may be different. When the Jocks and Burnouts go their separate ways after high school graduation, and the need to maintain these symbols decreases, the Burnouts will be stuck with an addiction, and the Jocks' abstinence may fade away.

### *Implications for Smoking Prevention Programs*

Insofar as smoking is an index of Burnout social identity, a nonsmoking campaign must address itself to Burnouts and to Burnout norms. Anything that ridicules or threatens Burnout norms or identity will be counterproductive. A popular television spot aimed at an adolescent audience appears to be based on a misinterpretation of the adolescent smoking population's norms: a teen-age actress, presenting a perfect "Jock" image, announces that she regards smokers as "losers". This presentation of the Jock image as a high school role model reflects the American myth that there is one homogeneous adolescent culture: the high school culture of sports, cheerleading, school activities, clubs, and dances. The myth assumes that most teenagers aspire to prominence or at least membership in this culture, and in the elite that governs it. This television spot reminds Burnouts that the rest of the adolescent population considers them "losers". Its effect is more likely to encourage them to comfort themselves with a cigarette, or to hold up their cigarettes in defiance. It would be more to the point to see the kind of person Burnouts look up to presenting nonsmoking as the sign of a certain kind of Burnout who "has it together."

The school where this study took place has, as an elite activity, an organization that travels to elementary schools in the area dramatizing the dangers of smoking. This activity interacts with the symbolic system of the high school in much the same way as the television spot. Insofar as the school institutes as an activity (and thus part of the Jocks' domain) an anti-smoking campaign, it reinforces the symbolic force of smoking. If anything, the school should play down

the differences between Jocks and Burnouts, particularly in this respect. Any benefit from this program will not carry into the population of the high school itself, and it may well only impress those in its elementary school audience who aspire to "Jockhood". From a point of view of pure social structure, locating an anti-smoking campaign in the "Jock establishment" is unproductive, if not counterproductive. Jocks are not the ones who are in danger of smoking, and it is not altogether obvious that the Jock image is what is needed to influence those small children who may be future smokers.

Although this school is in a large "typical" midwestern industrial suburb, serving students from a variety of White ethnic groups and from a broad socioeconomic range, it is not necessarily representative of American schools or even schools in a given region. The details of the social significance of smoking are not necessarily the same in all areas or in all schools. But insofar as smoking seems to be most widespread among working class adolescents, it is probable that the findings in this school are generally applicable to a large number of communities throughout the country. This remains, however, an empirical question, and one that needs to be addressed as an obvious preliminary step to publicity campaigns aimed at adolescents. Although symbolic systems may vary considerably from community to community, the general status of smoking as an adult prerogative gives it a widespread and constant underlying significance among adolescents. And while this significance will be elaborated differently in different social contexts, the basic mechanisms of symbolic elaboration are constant. What is universal is that smoking is a highly symbolic act, and as such acquires social meaning and compulsion within a given community's symbolic system. It is within the local symbolic system that

an anti-smoking campaign will be interpreted, and the campaign's success will depend on the extent to which it provides meaningful alternatives within that system.

Campaigns that de-glamorize the actual gestures of smoking would appear to be the most reasonable broad-based approach, insofar as they may de-fuse the overall symbolic value of the activity itself. In a more focused campaign, however, the social approach required to influence people against smoking will depend on the local dynamics of smoking. A campaign based on an inadequate understanding of these dynamics can not only be ineffective, it may in the end actually encourage smoking. It is important to know when one is challenging a symbol, and when one is challenging what that symbol stands for. A campaign against smoking should not be a campaign against the people who smoke, but against smoking as an inadequate expression of their identity.

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#### ACKNOWLEDGMENTS

This work was supported by the Spencer Foundation, the Rackham School of Graduate Studies of the University of Michigan, and the National Science Foundation (BNS 8023291).

### Second Nursing Research Conference Call For Abstracts

The Johns Hopkins Hospital Department of Nursing announces the second Nursing Research Conference to be held Monday, October 3, 1983. The theme of the conference is "Nursing Research: Key to Improving Nursing Practice."

A call for abstracts has been issued. Abstracts of 300 words should be mailed by April 30, 1983, to:

Dr. Margaret Dear  
Department of Staff Education  
Hampton House, Room 693  
624 N. Broadway  
Baltimore, Maryland 21205

For further information, contact Susan Bavaro, Program Coordinator, Johns Hopkins University, School of Medicine, 720 Rutland Avenue, Baltimore, MD 21205. Telephone (301) 955-5363.



SENATE HEALTH &amp; WELFARE

EXHIBIT NO. 86DATE 3/11/91H BILL NO. 849Paula C. Butterfield  
Superintendent

Phone: (406) 585-1501

Fax: (406) 585-1504

404 West Main, P.O. Box 520  
Bozeman, Montana 59711-0520

March 11, 1991

Dear Senators:

I would like to take this opportunity to urge you to vote to allow the students of Montana the opportunity to decide whether or not tobacco should be sold to minors. Although this may appear to be a risky thing to do, I believe you will be pleasantly surprised.

This winter the Board of Trustees in Bozeman, at the request of the President of the Student Government and Student Representative to the Board, allowed the students of Bozeman to vote on the issue of smoke and tobacco free schools. The vote was overwhelming (78% of the students voted for smoke and tobacco free schools), and as a result, all Bozeman Public Schools will be smoke and tobacco free as of July 1, 1991.

It would appear that our children are more aware of health and environmental issues than we were at their age. Many teachers came to me after the decision saying that they too voted to be smoke and tobacco free, but needed a program to help because they started smoking when they were young and it was the "cool" thing to do. So our children have been role models for their elders.

Let's allow the students throughout the state to lead their elders to better health.

Sincerely,

Paula C. Butterfield  
Superintendent  
Bozeman Public Schools

PCB/kc

TO: SENATE PUBLIC HEALTH COMMITTEE  
FROM: MIKE MALES  
RE: TESTIMONY IN SUPPORT OF HB 849

11 March 1991

HB 849 is not a "cute" idea to hold a frivolous election among kids or take a mere student opinion poll on a pressing public health issue. It represents a serious proposal to reduce tobacco use among Montana teenagers in the most effective manner possible: by permitting students themselves to make their own collective decision, then applying the pressure of that peer decision against individual youths who are in the initial stages of deciding whether to take up and continue smoking.

HB 849 embodies a very different view of Montana's young people than contained in measures purporting to forcibly reduce youthful tobacco use by means of legal sanction, arrest, and punishment. HB 849 is based on confidence in the abilities of students to make good decisions justified by their behavior with tobacco to date. For over 100 years, Montana has freely permitted minors to buy and use cigarettes. Yet Montana has the lowest smoking rate among teenagers of any state in the nation (and probably modern history) -- the first generation prepared to reject tobacco on a mass basis and whose opinion deserves respect.

HB 849 proposes to hold a "tobacco referendum" among Montana's 64,000 students in grades 7-12 in October 1991 asking whether stores should refuse to sell cigarettes and tobacco to persons under 18 years of age. If approved, stores would display signs stating that out of respect for the wishes of youths themselves, tobacco would not be sold to minors.

Experience with a similar referendum in the Bozeman schools shows it would engender widespread student interest at little time and expense. The mimeograph cost, at four ballots per page, would be around \$150, with similar costs for distribution to about 200 schools in other mailings by the Office of Public Instruction. Altogether, with vote tabulation, the referendum should cost less than \$500 to hold. Sign distribution to tobacco retailers in the state for voluntary posting (sample enclosed) with regular Department of Revenue mailings should cost less than \$50. The question is not referendum cost, feasibility, or logistics, but whether HB 849 represents a better alternative to discourage tobacco use by minors than mandatory legislated bans.

Montana is one of six states that allow tobacco sales to minors. The common assumption is that such permissiveness leads to greater smoking by youths. This is not the case. Montana teen-agers are less likely to try cigarettes than teens in other states, are less likely to continue smoking if they do try them, and are less likely to smoke:

MONTANA/NATIONAL SMOKING COMPARISONS	Montana	U.S.
Percent of high school seniors who smoke	11.0%	18.1%
Percent of adults who smoke	19.4%	28.2%
Ratio, youth:adult smoking rates	0.57	0.64
Percent of high school seniors who ever tried cigarettes (initiation)	61.0%	66.4%
Of those who ever tried cigarettes: percent who continue to smoke today	18.0%	27.3%

This responsible behavior by Montana youth shows up even more clearly when compared to teenagers in Minnesota, the state most widely credited with the most effective laws and enforcement. In Minnesota, persons who sell or provide tobacco to a minor can be fined up to \$3,000 and lose their sales license, while youths are subject to heavy penalties for buying or possessing tobacco. Minnesota issues detailed manuals on enforcement, and local jurisdictions have even stricter anti-tobacco laws. Yet the latest survey shows 17% of Minnesota's minors age 12-17 smoke, compared to 8% in Montana. Even under the most conservative assumptions possible, smoking rates among Minnesota youths are at least 50% higher than among Montana youths. The ratio of youth-to-adult smoking is 0.81 in Minnesota, and 0.42 in Montana.

This pattern also shows up over time. From 1976 to 1984, when laws banning minors from smoking were widely ignored, cigarette use among high school seniors nationwide dropped from 28% to 18%. Passage of stricter laws and well-publicized enforcement efforts have led to no further decrease in minors' smoking nationally since 1984.

The conclusion: laws and enforcement procedures do not work. Their advocates, in fact, have not been able to cite one state or locality in which legal bans on sale to, or possession of, tobacco by youths have led to fewer youths smoking -- which is, after all, supposed to be the goal. Legal bans quickly become entangled in irrelevant issues such as penalties, local preemptions, and enforcement mechanisms, with backers inevitably admitting such laws don't work and require more penalties.

The question, then, is what would be effective. The first option is to do nothing, on the grounds that Montana youth have demonstrated maturity in rejecting tobacco without being forced. However, doing nothing means that communities will increasingly implement a patchwork of local tobacco regulations, which remain popular even though experience in Missoula and Livingston shows they cannot be enforced. Note also that while tobacco chewing represents only a miniscule health threat (about 30 deaths in Montana annually, compared to 1,450 from smoking), both Montana youths and adults have higher than average chewing rates.

Studies of, and conversations with, youthful smokers indicate they smoke primarily because their parents, relatives, older siblings, and friends smoke. In fact, 75% of all teen smokers have parents who smoke. Smoking parents are a far greater influence on youth than the often-blamed factors of tobacco advertising, youthful experimentation, and tobacco availability. Smoking parents model smoking for their children. Worse still, clinical evidence showing both significant blood levels of cotinine (the metabolized derivative of addictive nicotine) and damaging health effects in the children of smoking parents indicates children may be "pre-addicted" to nicotine by "passive" smoking, which some youths later seek to relieve by taking up active smoking or chewing.

These familial "smoking legacies" illustrate the continuing nature and wide variety of private cigarette supply available to youths even if police dropped investigation of other crimes and miraculously succeeded in enforcing public tobacco sales laws. The theory of HB 849 is that this legacy can be broken by using the pressure of peers to discourage youths from smoking families from taking up the habit modeled by adults. A voluntary personal decision is the one most likely to "take." Of the 82% of Montana's youth who reject smoking during adolescence, 90% will stick to that decision for the rest of their lives. Laws do not reduce

youths' tobacco use, but many said manifest peer disapproval would -- particularly at initial stages.

Thus HB 849. The intent of the bill is to demonstrate peer disapproval of smoking in the most forceful way possible, via a statewide referendum which allows junior and senior high school students the power to decide the tobacco sales question for their generation. We have already seen that Montana teenagers have much lower smoking rates (8%) than Montana adults (19%). While the outcome of a referendum cannot be predicted, a nationwide Gallup Poll in 1990 showed majorities of teens wanted to ban tobacco sales to both minors and adults.

The results of the Bozeman tobacco referendum in December 1990, in which 1,750 students in grades 7-12 (90% of the student body) voted, showed 73% in favor of a tough tobacco-free schools policy. Among 7-9 grade students, 87% voted for tobacco-free schools. A number of Bozeman students told me of class discussions on the referendum, in which a large majority forcefully informed tobacco smoking and chewing peers they did not appreciate their habits (ie, smoking at school events, or chewing and spitting in drinking fountains). After the vote, Bozeman schools superintendent Paula Butterfield reported several individuals told her they would voluntarily quit smoking. These are the kinds of positive results the referendum approach has potential to engender.

HB 849, as a voluntary approach emphasizing youth responsibility, is an alternative to bills legally banning tobacco sales to minors. We would ask the committee to choose either the mandatory or the referendum approach, or reject both and leave the status quo. There is no point in passing both mandatory and voluntary measures. For adults to make the decision for them, then schedule a meaningless vote among students that is simply window-dressing, would demonstrate the very lack of confidence in youth HB 849 is intended to affirm. The outcome of the referendum cannot be predicted, but youths have demonstrated they are in the most effective position to reduce tobacco use among their peer group and deserve the opportunity to do so. Thank you for your consideration.

Mike Males  
1104 S. Montana, No. F-12  
Bozeman, MT 59715

Sources:

- Montana Office of Public Instruction/Department of Health and Environmental Sciences. *Montana Adolescent Health Status*. Helena, 1990.
- National Institute on Drug Abuse. *Drug Use, Drinking, and Smoking -- National Survey Results from High School, College, and Young Adult Populations, 1975-1988*. Washington, D.C.: U.S. Department of Health and Human Services, 1989.
- U.S. Public Health Service. *Smoking, Tobacco & Health, A Fact Book*. Washington, D.C.: U.S. Department of Health and Human Services, 1989.
- U.S. Public Health Service. *The Health Consequences of Involuntary Smoking, A Report to the Surgeon General*. Washington, D.C.: U.S. Department of Health and Human Services, 1986.



4

Tuesday, December 4, 1990

O

OUR OPINION

## Put it to the right vote

### *Student referendum on tobacco sales ban makes a lot of sense*

State Rep. Dorothy Bradley's proposed informal referendum to ban sales of tobacco to minors would not have the force of law, but its effect could be even more far reaching.

Bradley has suggested that the referendum be put to a vote — not by the general electorate — but by those who would be excluded from tobacco purchases: Montana's high school and junior high school students.

If the initiative passed, the state would issue signs stating that complying business are refraining in tobacco sales to minors at the request of the minors themselves.

But the real impact of the non-binding referendum could be much more significant. It would force a debate on the issue among those who would be affected by it. The debate would be a lesson on the importance of voter participation, and, more importantly, it would focus teens' attention on the dangers of tobacco use during the

formative years when lifetime habits are acquired.

Several proposals to ban tobacco sales to minors have been suggested, and they should be seriously considered by lawmakers. But Bradley's plan recognizes an important reality: that the effectiveness of a legal prohibition on sales to minors is questionable at best. One need only look at the ban on the sale of alcoholic beverages to minors to be convinced of this. Arrests of underage youths for possession of alcohol are frequent. And, sadly, many are the classes of high school seniors whose graduations are tainted by the tragedy of serious alcohol-related traffic accidents.

While lawmakers are frequently plagued by non-binding resolutions that do nothing but satisfy special interests, Bradley's idea would be much more than legislative window dressing and should be wholeheartedly endorsed by all lawmakers.

Ultimately, neither a legal prohibition nor the passage of the student referendum may have a substantial effect on the use of tobacco by minors. But, given the options, Bradley's idea is at least worth a try.



SENATE HEALTH & WELFARE

EXHIBIT NO. 7

DATE 3-11-91

BILL NO. HB 849

Executive Office  
318 N. Last Chance Gulch  
P.O. Box 440  
Helena, MT 59624  
Phone (406) 442-3388

MARCH 9, 1991

MEMO: TO SENATOR DOROTHY ECK, CHAIRPERSON  
PUBLIC HEALTH, WELFARE AND SAFETY

FROM: CHARLES BROOKS  
EXEC. VICE PRESIDENT  
MONTANA RETAIL ASSOCIATION AND AFFILIATES

RE: SB 369, HB 378, HB 849.

I WOULD LIKE TO MAKE SOME OBSERVATIONS ABOUT THIS PROPOSED  
LEGISLATION FOR YOUR CONSIDERATION BEFORE THE COMMITTEE TAKES  
ACTION ON THESE BILLS.

FOR THE RECORD, I AM OPPOSED TO TOBACCO BEING SOLD TO ANYONE 18  
YRS OR YOUNGER. RETAILERS DO HAVE A RESPONSIBILITY TO ABIDE BY  
THE LAW AND SET THE EXAMPLE. RESPONSIBLE RETAILING IS CRITICAL  
WHERE THIS TYPE OF PRODUCT IS CONCERN. IT IS PERFECTLY LEGAL TO  
SELL TOBACCO PRODUCTS AND WE HAVE EVERY RIGHT TO SELL TOBACCO IN  
THIS FREE ENTERPRISE SYSTEM - SO LONG AS APPLICABLE STATE AND  
FEDERAL LAWS ARE MET. IN FACT, IN THE CASE OF TOBACCO, FEDERAL  
SUBSIDIES STILL ENCOURAGE PRODUCTION OF THE PRODUCT.

IT SEEMS TO RETAILERS THAT YOU ARE ASKING US TO SOLVE A SOCIAL  
AND HEALTH PROBLEM THAT, THE SCHOOLS, MEDICAL COMMUNITY, PARENTS,  
PTA, LUNG AND CANCER ASSOCIATION HAVE NOT BEEN ABLE TO SOLVE.  
YOU ARE NOW TURNING TO RETAILERS AND ASKING US TO HANDLE THE  
PROBLEM AND IF WE FAIL, THEN YOU WANT TO PROVIDE PENALTIES THAT  
ARE VERY, VERY MUCH OUT OF LINE. THIS PRESSURE PUTS RETAILERS  
IN A SEEMINGLY UNTENABLE POSITION. SHOULD THEY CARRY THESE  
PRODUCTS AND TAKE ADVANTAGE OF THE LEGITIMATE PROFIT  
OPPORTUNITIES THEY PROVIDE? OR IS THEIR SOME HIGHER MORAL  
STANDARD THEY SHOULD MEET? THE KEY IS RESPONSIBLE RETAILING. OUR  
INDUSTRY WILL BE RESPONSIBLE, AS LONG AS THE LAWS ARE REASONABLE  
AND CAN BE ENFORCED WITHOUT UNDUE HARDSHIP ON MANAGEMENT AND  
STORE CLERKS.

SB 369:

SECTION C PAGE 4, WILL SURELY BE TESTED IN COURT IF IT REMAINS IN  
THE BILL, PASSES BOTH HOUSES, AND SIGNED BY THE GOVERNOR. THE  
PENALTIES IN SECTION 4, PAGE 3, LINES 2 THRU 13 ARE ALSO TOO  
LARGE.

IT IS HARD FOR US TO UNDERSTAND WHY NO PENALTIES ARE IN THE BILL  
FOR THAT PERSON UNDER 18YRS, WHO GETS AROUND THE SYSTEM, AND THEY  
SURELY WILL, JUST AS THEY DO WITH BEER, WINE ETC.?? WHY NOT  
INCLUDE A FINE FOR PURCHASE, POSSESSION AND ANY ONE WHO GIVES OR  
PURCHASES FOR A PERSON UNDER AGE?? IN OUR JUDGMENT THIS WOULD  
GO A LONG WAY IN BRINGING THE PROBLEM UNDER CONTROL. WE CANNOT  
SUPPORT THIS BILL AS CURRENTLY WRITTEN.

HB 849:

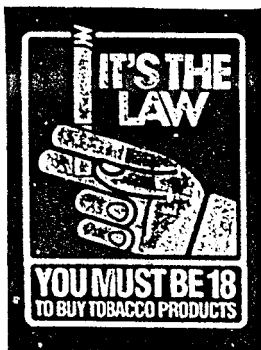
WE URGE YOUR SUPPORT OF THIS BILL AS IT IS A REASONABLE APPROACH TO THE PROBLEM. RETAILERS WILL BE RESPONSIBLE IN EFFORTS TO AVOID THE PURCHASE, OBTAINING AND USE OF TOBACCO BY ANYONE UNDER THE AGE OF 18YRS. RESPONSIBLE RETAILING IS THE CRITICAL ISSUE. GIVE OUR RETAILERS AN OPPORTUNITY TO PROVE OR DISPROVE THEIR ABILITY TO BETTER CONTROL THE SELL OF TOBACCO TO TEENAGERS.

HB 378:

WE WILL SUPPORT THIS BILL, PROVIDED YOU DO NOT PASS HB 849. HOWEVER OUR POSITION ON THIS BILL IS VERY MUCH LIKE THE OBSERVATIONS ON SB 369. WE WOULD LIKE THE PENALTIES FOR THE TEENAGER UNDER 18YRS TO BE CLEARLY SPELLED OUT IN THIS BILL AND BE THE SAME AS THE ONES IMPOSED ON THE RETAILER.

THANK YOU FOR CONSIDERING THESE THOUGHTS ABOUT SB 369. HB 849 AND HB 378. IF YOU HAVE QUESTIONS, I WOULD BE HAPPY TO MEET WITH YOU.

RETAILERS ARE VERY INTERESTED IN SEEING THIS PROBLEM BROUGHT UNDER CONTROL. IT WILL TAKE ALL ELEMENTS OF SOCIETY WORKING TOGETHER TO BE SUCCESSFUL.



- Involuntary smoking can cause lung cancer in nonsmokers.
- The children of parents who smoke have an increased frequency of hospitalization for bronchitis and pneumonia during the first year of life when compared with the children of nonsmokers.
- The children of parents who smoke have an increased frequency of a variety of acute respiratory illnesses and infections, including chest illnesses before 2 years of age and physician-diagnosed bronchitis, tracheitis, and laryngitis, when compared with the children of nonsmokers.
- Chronic cough and phlegm are more frequent in children whose parents smoke compared with children of nonsmokers.
- Undiluted sidestream smoke is characterized by significantly higher concentrations of many of the toxic and carcinogenic compounds found in mainstream smoke, including ammonia, volatile amines, volatile nitrosamines, certain nicotine decomposition products, and aromatic amines.
- Environmental tobacco smoke can be a substantial contributor to the level of indoor air pollution concentrations of respirable particles, benzene, acrolein, N-nitrosamine, pyrene, and carbon monoxide.
- Measured exposures to respirable suspended particulates are higher for nonsmokers who report exposure to environmental tobacco smoke.
- The main effects of the irritants present in environmental tobacco smoke occur in the conjunctive of the eyes and the mucous membranes of the nose, throat, and lower respiratory tract. These irritant effects are a frequent cause of complaints about poor air quality due to environmental tobacco smoke.
- Smoking policies may have multiple effects. In addition to reducing environmental tobacco smoke exposure, they may alter smoking behavior and public attitudes about tobacco use. Over time, this may contribute to a reduction in smoking in the United States. To the present, there has been relatively little systematic evaluation of policies restricting smoking in public places or at the workplace.
- On the basis of case reports and a small number of systematic studies, it appears that workplace smoking policies improve air quality, are met with good compliance, and are well accepted by both smokers and nonsmokers. Policies appear to be followed by a decrease in smokers' cigarette consumption at work and an increase in enrollment in company-sponsored smoking cessation programs.
- Laws restricting smoking in public places have been implemented with few problems and at little cost to State and local government.
- Public opinion polls document strong and growing support for restricting or banning smoking in a wide range of public places. Changes in attitudes about smoking in public appear to have preceded legislation, but the interrelationship of smoking attitudes, behavior, and legislation are complex.

Source: The U.S. Surgeon General's report, "The Health Consequences of Involuntary Smoking"



HB 860

Testimony by Liter Spence to the Senate Committee on  
Public Health, Welfare and Safety

March 11, 1991

My name is Liter Spence. I am an employee of the Department of Fish, Wildlife and Parks in Helena and am here on my own time representing a committee of employees in the Department of Fish, Wildlife and Parks building which has been involved in a smoking policy for our building. We agree with the intent of the legislation to provide a smoke-free environment in state buildings. The DFWP headquarters building at 1420 East 6th Avenue was declared smoke-free by the director's office in January 1990. Signs are located at all building entrances stating that smoking is not allowed anywhere within the building.

This no smoking policy was the result of recommendations by a smoking policy committee of employees appointed by the director's office as a result of numerous complaints by employees about smoke in the building. At that time, smoking was allowed in restrooms, corridors, the lobby, in the building's single, small lunchroom, and in some work spaces.

The smoking policy committee conducted a survey of all the employees in the building as to their preference for a smoking policy. The survey results and the space limitations in the building showed that the best option was to designate the entire

building smoke-free. This policy has worked very well since being implemented over a year ago.

New Section 3(2) of this bill, as amended, states that an agency head shall establish at least one designated smoking area within the building. We feel this requirement would be a backward step for our employees.

We recommend the bill be amended so that agencies have the option to establish a designated smoking area, but are not required to do so, and, that agencies with an existing smoke-free building policy be allowed to continue that policy.

We recommend the bill be amended in New Section 3(2) (page 2) replacing in the first sentence (line 18) the word shall with the word may as was contained in the introduced bill.

dr



# AMERICAN LUNG ASSOCIATION OF MONTANA

Christmas Seal Bldg. — 825 Helena Ave.  
Helena, MT 59601 — Ph. 442-6556

EARL W. THOMAS  
EXECUTIVE DIRECTOR

SENATE HEALTH & WELFARE

ENGLISH NO. 10

DATE 3/11/91

# BILL NO. 860

TO: MEMBERS OF SENATE PUBLIC HEALTH COMMITTEE

FROM: EARL THOMAS, EXECUTIVE DIRECTOR  
AMERICAN LUNG ASSOCIATION OF MONTANA

DATE: MARCH 11, 1991--3 P.M. ROOM 410

SUBJECT: HB 860--DECLARING STATE BUILDINGS SMOKE-FREE

THE AMERICAN LUNG ASSOCIATION OF MONTANA SUPPORTS HB 860.

WE APPLAUD THE HOUSE OF REPRESENTATIVES FOR APPROVING HB 860.

A 1987 GALLUP NATIONAL OPINION SURVEY REPORTED THAT 55% OF ALL PERSONS WERE IN FAVOR OF A TOTAL BAN ON SMOKING IN THE WORKPLACE.

BY GIVING HB 860 A "DO PASS" RECOMMENDATION YOU WILL HELP THE OVER 80% OF MONTANA'S STATE EMPLOYEES FROM WORKING IN UNHEALTHY CONDITIONS PLUS HELP SMOKERS TRYING TO QUIT TO BE MORE SUCCESSFUL, REDUCE ACCIDENTS, CLEANING COSTS, AND FIRE RISKS.

THESE SMOKE-FREE POLICIES WILL ENCOURAGE BUSINESSES TO ADOPT SIMILAR POLICIES.

THE ATTACHED HANDOUT PROVIDES ADDITIONAL DATA ON HAZARDS OF SMOKING AND THE WORKPLACE.

# Smoking And The Workplace

6

## Why Does Smoking Cause Harmful Health Effects In The Workplace?

The fact that smoking, especially cigarette smoking, can damage people's health is well-documented. Cigarette smoking is the leading cause of preventable disease and death in the United States. It is a major cause of emphysema, chronic bronchitis, lung cancer and heart disease.

Cigarette smoking also increases the total exposure to harmful chemicals that workers receive. More importantly, it can act in combination with workplace chemicals to raise the level of damaging health effects. In addition, harmful health effects can occur from smoking a cigarette that is contaminated with chemicals or other substances used or produced on the job. Nonsmokers may also develop health problems from breathing in smoke from co-workers' cigarettes.

## What Are the Ways That Smoking In The Workplace Can Affect Your Health?

**Synergistic Health Effects of Cigarette Smoking and Chemical Exposures.** When workers smoke and are exposed to other toxic substances on the job, they can experience far greater health damage than what might be expected from simply adding together the damage each contributing factor is capable of causing. The most dramatic example of greater health damage resulting from "combined" exposures involves smoking and asbestos. Asbestos workers who smoke more than a pack a day have up to 90 times the chance of dying of lung cancer as compared to workers who neither smoke nor work with asbestos. Another substance that appears to act in this "combined" way with tobacco smoke is chloromethyl ether.

**Cigarette Smoking Can Add to Health Damage Caused By Exposure to Toxic Agents.** Scientists have concluded that chronic respiratory diseases develop when the lungs repeatedly experience the damaging effects of cigarette smoking, recurrent respiratory infections beginning in childhood, or long-term occupational and environmental exposures. Smoking adds to the harmful health effects which result from exposure to toxic chemicals in the workplace.

**Chemicals In Cigarette Smoke Are Also Found In the Workplace.** Tobacco smoke contains hundreds of toxic substances, many of which are also found in the workplace. The following is a partial list of chemicals found in cigarette smoke that are commonly present in the workplace and can add to a worker's total exposure:

Acetone	Lead
Aldehydes (acetaldehyde, acrolein, formaldehyde)	Methyl Chloride
Arsenic	Methyl Nitrate
Benzene	Nicotine
Cadmium	Nitrogen Dioxide
Carbon Monoxide	Nitrosamines
Hydrogen Cyanide	Phenol
Hydrogen Sulfide	Polycyclic Aromatic Compounds (tar)
Ketones	

**Workplace Chemicals Can Enter the Body When Contaminated Cigarettes Are Smoked.** Cigarettes may actually help to carry toxic substances into the body. As a person holds and smokes a cigarette, toxic substances may enter the body through breathing, taking them in through the mouth or skin absorption. Examples of workplace chemicals that can enter the body of workers smoking contaminated cigarettes include dusts, lead, mercury and formaldehyde. Additionally, pesticides used in treating tobacco during processing can enter the body by breathing them in and become 100% absorbed. The National Institute for Occupational Safety and Health (NIOSH) recommends that cigarettes not be kept on a person in the work area and that if a person must smoke their hands should be washed before smoking.

**Burning Tobacco Can Transform Workplace Chemicals Into More Toxic Substances.** The heat generated by burning tobacco can transform workplace chemicals into more harmful substances. An example of this is Polymer Fume Fever. This is a disease caused by breathing fumes generated from heated teflon. The fumes can lead to permanent lung damage. Polymer fumes can enter the lungs as a worker smokes cigarettes contaminated by the work process or contact with the worker's hands. Another example of this type of "heat-generated" transformation is the conversion of chlorinated hydrocarbons, such as trichloroethylene, into highly toxic phosgene gas.

**Workers Who Smoke Have More Accidents.** Smokers have twice the accident rate of nonsmokers on the job. Suggestions about the reasons for this include loss of attention, the fact that a person's hands may be busy with the activity of smoking, irritation of the eyes and coughing. Higher carbon monoxide levels caused by smoking may lower alertness and reflex speed. Smoking can also contribute to fire and explosions in occupational settings where flammable and explosive chemicals are used.



## What Can You Do To Prevent And/Or Decrease The Harmful Health Effects Caused By Smoking?

- Ask your employer to prohibit smoking in the workplace.
- Ask your employer to promote stop-smoking programs and incentive programs that encourage people to become nonsmokers.
- Do not use or carry tobacco products in a work area where you may be exposed to chemical substances.
- If you don't know if toxic substances are present, keep tobacco products out of the work area.
- If you must smoke, smoke only in designated areas that are

well-ventilated and located away from work processes.

- Always wash your hands before smoking.
- Contact your local American Lung Association and ask about their new workplace smoking program, TEAM UP FOR FREEDOM FROM SMOKING® (TUFFS). TUFFS is a comprehensive workplace smoking policy development, education and stop-smoking program. The program is designed to be fun, exciting and unique for all participants. TUFFS includes an implementation guide for the employer, an Aim To Quit Kit containing more than 20 items to help smokers build and maintain their motivation to quit, and a Teammate Support Kit for co-workers helping smokers through the stages of quitting.

## Where Can You Obtain Additional Information?

**Your local American Lung Association** Provides literature, audio visual materials and referral information to workers and employers concerned about work-related lung hazards and diseases. You can look up your local ALA in the blue pages of your telephone book.

**National Institute for Occupational Safety and Health (NIOSH)** Responds to requests from the general public and workers with occupational health concerns of problems. Call 1-800-NIOSH for information.

### U.S. Occupational Safety & Health Administration (OSHA) Services.

**Consultation** — Provides free consultation services and written materials to employers and employers requesting information/advice on occupational safety or health hazards and related control measures. On-site consultation visits at employers' request can also be arranged.

**Complaints** — Responds to employee complaints of unsafe or unhealthy working conditions. Conducts workplace inspections and reduces occupational safety and health standards.

**State or Local Health Departments** Information is provided on occupational and environmental health hazards and control measures.

**Safety Equipment Suppliers** Respirators and other personal protective equipment can be purchased from local safety suppliers.

**Occupational Health Centers** Specialize in providing a wide range of services such as industrial injury treatment, personal protective equipment, medical surveillance of workers exposed to toxic substances, health hazard evaluation, consultation and problem-solving in occupational health. Centers may be associated with universities or private health care providers.

**Community or University Libraries** References are available at local libraries on health effects related to workplace chemical exposures. Health education materials on occupational safety and health are available at local health departments, state health departments, National Institute for Occupational Safety and Health (NIOSH). Libraries may also provide (for a fee) computer search services to obtain the most up-to-date health information on hazardous substances.


**Your Union Representative** Unions are often a good source to contact for occupational safety and health information as well as medical and legal referrals.

**Your Personal Physician** You should inform your physician about chemical and physical agents to which you have been exposed at work. The information is useful to your doctor in determining if an illness is work-related.

The American Lung Association's Fact Sheet #9 in this series, "Community Resources for Occupational Health," further explains the resources of these and other organizations.

AMERICAN LUNG ASS'N. OF MONTANA  
825 Helena Ave. — (406) 442-5556  
1-800-ALA OF MT  
Helena, MT 59601

"The Christmas Seal People"

AMERICAN  LUNG ASSOCIATION®  
The Christmas Seal People®

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 11 day of May, 1991.

Name: Susan Meyer

Address: P.O. Box 4112 Helena, MT 59604

Telephone Number: none

Representing whom?

Smokers

Appearing on which proposal?

HB 860

Do you: Support?      Amend?      Oppose? X

Comments:

The state already has a law, it needs some  
clarification, but adding everything else makes  
the law even more unstable

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

MEMORANDUM

TO: Dennis Adams, Director

FROM: Department of Revenue (smokers)

DATE: September 20, 1990

SUBJECT: Smoking

- Exhibit #11  
3-11-91 HB 860

This is in reference to our civil rights being taken away. We the smokers are once again being deprived of our rights. Our Department Policy clearly states smoking is permitted in designated smoking/break rooms. One is to be allocated on the 3rd and 4th floors of the Mitchell building for all of the Department of Revenue. Since this policy became effective only one room was designated for smoking by Income Tax Division which was located on the 3rd floor. All other divisions used this room because the administrators never told their division employees what was going on. Motor Fuels Tax Division on 2517 Airport Road has their own smoke room and a break room. Why is there so much inconsistency in the Mitchell Building. Why can employees smoke on the 2nd floor in their offices? Is it because they are not the Department of Revenue? We recognize there is no room on the 3rd floor but how about the 4th floor?

On page 3 of 3 of the Department of Revenue's Administrative Manual item #3 clearly states the Division Administrators may designate an area for smoking. Well on 9-06-90 at 2:00 pm a memorandum was sent notifying that the smoke room will be permanently removed effective 5:00 pm that day. Short notice, also only Income Tax Division was notified. See attached memo.

A copy of The Montana Clean Indoor Air Act is attached. See 50-40-201 Reservation of smoking and nonsmoking areas in work areas in state and local government buildings. We have more than seven employees in each Division that smoke. Does Department Policy override State Laws and/or Exemptions?

Our constitutional rights have been violated. We the smokers are being discriminated against. Smoking is a social condition.

The CONSTITUTION OF MONTANA (also attached);  
Section 4. "Individual dignity. The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas." Why are we being discriminated against?? Is it our religion? sexual preferences? Because we protect owls? Because we may be democrat instead of a republican? etc.

Our work incentives have been taken away one by one over the last 4 years. No pay increases. Insurance goes up. cost of living goes up, gas, food, etc. This is another blow to the people. Now about doing the next step. Absolutely no food or drinks allowed in the work place. Reason: It makes people ill to watch someone overeat which will effect that person's health. You know heart attacks kill thousands. Besides it would save state funds by eliminating various state funded Health Programs. This rule will also save the State thousands of dollars on the equipment budget do to the spilling of drinks. Drinks and food get spilled on important files, office equipment, carpeting, chairs, etc. We should probably ban food from all offices. Ban microwaves from the closets. Do you know what happens when someone with a pacemaker walks by a microwave oven that is in use? There are not even any signs in the department stating we have them. The public is always coming up to the Mitchell building. What about other buildings?

Based upon the above information and the attached copies of State Laws and Policies, we're asking that you reconsider the actions of your administrator's in denying our rights. We are only asking that you and your staff abide by the same laws to which we're required to adhere.

cc: DOR, Administrator  
Governor  
Human Rights Commission

- Exhibit #11  
3-11-91 HB 860

*Closed the notice  
to all employees.*

MEMORANDUM

- Exhibit #11  
3-11-91 HB 860

To: Income Tax Division Staff  
From: " Jeff Miller, Administrator Income & Misc. Tax  
Subject: Block Room Expansion - Conference Room Relocation  
Date: September 6, 1990

The increasing volume of current year income tax returns will require us to expand the block room. Having reviewed all available options, this memo is to inform you of my plans and the time table I hope to follow in implementing these changes.

EXPANSION OF THE BLOCK ROOM

The Block Room will soon expand into our existing conference room. We have ordered construction of additional shelving units to line the east wall of Room 316. We will also construct work stations along the west wall to accommodate the "pre-entry" of full pay returns with the advent of the enhanced Income Tax System January 1st, 1991.

RELOCATION OF THE CONFERENCE ROOM

The conference room will be relocated to Room 315 - the existing Designated Smoking Area / Break Room. I regret the inconvenience this may cause some of you, but we simply don't have the luxury of extra space.

Since we do not have another suitable space on either the 3rd or 4th floor, the designated smoking area for Division employees will be either the new cafeteria's designated smoking area or outside the building. Smoking elsewhere is prohibited by Department Policy 305-1.

Room 315 will be cleaned and painted starting tomorrow September 7th. It's use as a designated smoking area will permanently cease as of 5:00 P.M. today. We will relocate the refrigerator to the janitor's closet across the hall.

If you have questions or concerns regarding these matters, I will be pleased to visit with you.

cc: Division Administrators  
Director's Office

DEPARTMENT OF REVENUE

SECTION:

PERSONNEL

ADMINISTRATIVE  
MANUAL

SUBJECT: DESIGNATED SMOKING  
AREAS

GOALS:

The goal of this policy is to promote the health and safety of the work environment. The policy is intended to provide designated smoking and non-smoking areas rather than prohibit smoking entirely.

POLICY:

It is the policy of the Department that:  
SMOKING IS PERMITTED ONLY IN AREAS DESIGNATED  
FOR THAT PURPOSE.

1. The following have been designated as NO SMOKING areas:
  - Entrance and Reception Areas
  - Hallways and Corridors
  - Stairwells
  - Elevators
  - Conference/Meeting Rooms
  - Restrooms
  - Copy Areas
  - Individual work spaces
  - \* In buildings where no single room is available the Administrator may designate the entrance or an entry way as a Designated Smoking area.
2. The following have been designated as SMOKING areas:
  - Designated Smoking/Break Rooms equipped with Department approved and supplied air filter machines. The Department will supply and replace filters at regular intervals.
3. Morning and Afternoon Breaks:
  - Employees may divide their a.m. and p.m. break into 2 ten-minute segments to allow time to use the Designated Smoking/Break Room and return to their work area.

DEPARTMENT OF REVENUE

SECTION:

PERSONNEL

ADMINISTRATIVE  
MANUAL

SUBJECT: DESIGNATED SMOKING  
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GOALS:

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- Conference/Meeting Rooms
- Restrooms
- Copy Areas
- Individual work spaces
- \* In buildings where no single room is available the Administrator may designate the entrance or an entry way as a Designated Smoking area.

2. The following have been designated as SMOKING areas:

- Designated Smoking/Break Rooms equipped with Department approved and supplied air filter machines. The Department will supply and replace filters at regular intervals.

3. Morning and Afternoon Breaks:

- Employees may divide their a.m. and p.m. break into 2 ten-minute segments to allow time to use the Designated Smoking/Break Room and return to their work area.

DEPARTMENT OF REVENUE	SECTION: PERSONNEL
ADMINISTRATIVE MANUAL	SUBJECT: DESIGNATED SMOKING AREAS

- 4. Smoking shall be limited to cigarettes.
- 5. Walking within the building with lit cigarettes is not permitted.

**IMPLEMENTATION:**

- 1. Division Administrators or elected officials are responsible for implementing and enforcing this policy.
- 2. Beginning June 1, 1988, the Department will pay for one freedom from smoking class or similar class approved by the Wellness Program for current employees. Employees attending 75% of the sessions will be reimbursed for 75% of the cost. The Department will reimburse the employee for the remaining 25% upon completion of the course. Classes will normally be scheduled on the employees personal time.
- 3. Beginning June 1, 1988, all applicants will be informed of the Smoking Policy during interviews.
- 4. Beginning September 1, employees are expected to follow the guidelines established in this policy. Employees who do not follow the policy will be subject to progressive disciplinary action.
- 5. A copy of this policy and signs stating "No Smoking Except in Designated Smoking Areas" shall be posted at all entrances.

**APPLICATION:**

- 1. All Department of Revenue employees who work in buildings where Department of Revenue employees are the primary occupants will comply with this policy.
- 2. All Department of Revenue employees who work in buildings where there is joint occupancy with other businesses will comply with this policy in the office area designated for Department of Revenue employees.



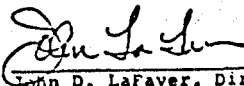
DEPARTMENT OF REVENUE	SECTION: PERSONNEL
ADMINISTRATIVE MANUAL	SUBJECT: DESIGNATED SMOKING AREAS

3. Division Administrators may arrange for one room to be designated as the Smoking/Break Room. One Smoking/Break room may be assigned per floor in buildings where employees from more than one division work on the same floor. In buildings where no single room is available, the Administrator may designate an entry way or entrance as the Smoking Area.

STATUTE: The Montana Clean Indoor Air Act is the basis for this policy. (MCA 50-40-101-201)

CLOSING: This policy shall be followed unless it conflicts with negotiated labor contracts or specific statutes, which shall take precedence to the extent applicable.

Approved



John D. LaFaver, Director

MEMORANDUM

To: Income & Misc. Tax Division Staff  
From: Jeff Miller, Administrator  
Subject: Clarification of Designated Smoking Area  
Date: September 7, 1990

As a point of clarification to my memo yesterday explaining the expansion of the block room and the relocation of the conference room, please consider the followings:

My paragraph stating:

Since we do not have another suitable space on either the 3rd or 4th floor, the designated smoking area for Division employees will be either the new cafeteria's designated smoking area or outside the building. Smoking elsewhere is prohibited by Department Policy 305-1.

was not well worded. I do not have authority, nor did I intend to designate the cafeteria as this Division's Designated Smoking Area. My apologies to Esther especially, and anyone else confused by my poor drafting. Rather, my memo should have stated:

With the closure of Room 313 as a Designated Smoking Area, there are no remaining Division Designated Smoking Areas on either the 3rd or 4th floor.

Finally, I understand that smoking is permitted in Esther's cafeteria. However, I would certainly think that common courtesy would suggest her tables are intended for her patrons.

mc: Esther  
Director's Officer

# State of Montana

Non-Partisan, Government

Exhibit # 11  
3-11-91 HB 860



## Department of Revenue

Denis Adams, Director

Room 455, Sam W. Mitchell Building

Helena, Montana 59620

September 27, 1990

### MEMORANDUM

To: Teresa Boyd  
Income and Miscellaneous Tax Division

From: Pat Lopach *Pat Lopach*  
Personnel Officer

Subject: Designated Smoking Areas Policy

Denis Adams has asked Jeff Miller and myself to review the concerns you raised in your memorandum dated September 6 and in a second memorandum dated September 20, 1990.

We plan to form a committee to address the issues you raised and to try to identify ways to resolve those issues. The committee would consist of two representatives from the smokers group, two representatives from the Mitchell Building Cafeteria Committee, two non-smoking employees, Jeff Miller and myself.

Please contact me with the names of your representatives by 5:00 am on Monday, October 1. I will then try to schedule a meeting at a time that works for everyone.

Hopefully, if we all put our heads together, we will be able to come up with a workable solution.

copy: Denis Adams  
Jeff Miller

# State of Montana

Great Northern, Incorporated

Exhibit # 11  
3-11-91 HB 860



## Department of Revenue

Denise Adams, Director

## Income and Miscellaneous Tax Division

Jeff Miller, Administrator

September 27, 1990

### MEMORANDUM

TO: Pat Lopach  
Personnel Officer

FROM: Chuck Wowerelt *Chuck*  
Income and Miscellaneous Tax Division

RE: Designated Smoking Areas Policy

This will confirm receipt of your memorandum concerning the above matter. I am aware of the signed petition that was sent to the director, and am now aware of the second memorandum you referred to. I also understand that the DOR smokers are scheduling a meeting to select their representatives.

I believe that there are two questionable issues in your memorandum that must be addressed before any meetings should be scheduled:

1. Your requirement for the names of the two smokers representatives by 5:00 am on Monday, October 1st, permits little or no time to select our representatives. Somehow, I don't believe you particularly want to be called at that time in the morning.
2. The problem being addressed is not a smoking vs non-smoking problem. It's merely a matter of providing a smoking area as provided by law.

Therefore, the two non-smoking representatives should not be included in the meeting. The non-smokers concerns have already been met under the existing DOR policy. Certainly, they should not be included when both of them apparently are going to represent the director in a presumably unbiased meeting.

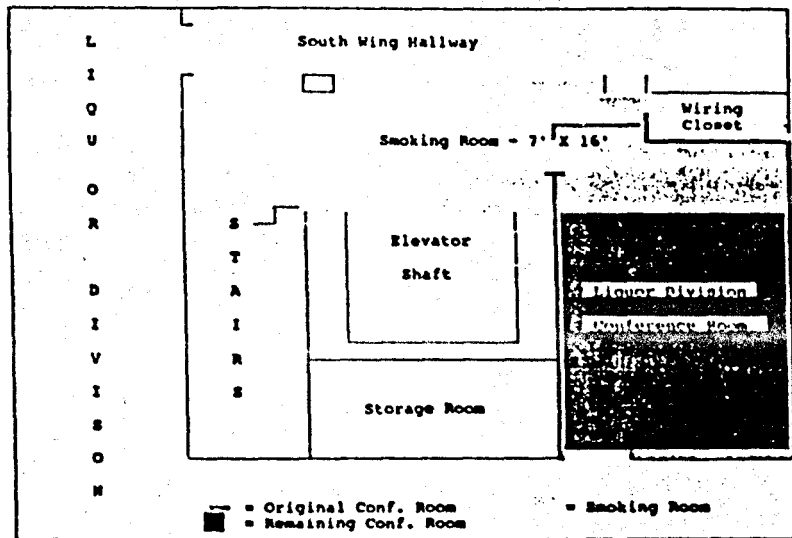
cc: Denis Adams  
Jeff Miller  
DOR Smokers

# Memorandum

November 26, 1990

To: All Division Administrators  
From: Jack Ellery, Deputy Director  
Subject: Smoking Room Progress

Today, Jeff, Gary and I met with Department of Administration staff to discuss the creation of a smoking room on the third floor. We are proposing to create a smoking room by carving out a portion of the Liquor Division conference room and expanding into the hallway. Below is a schematic of the designated smoking area:



The General Services Division estimates the cost of remodeling to be \$1,500 to \$2,000. This estimate includes ventilation fans to exhaust smoke through the elevator shaft to the roof exterior. Additionally, they have committed to have work completed by January 1, 1991. Please share this with your staff. I would appreciate any comments as soon as possible.

*Room done 3/1/91  
not vented thru elevator*

## PERSPECTIVES

## THE LESSON OF BEVERLY HILLS

In 1987 the City Council of Beverly Hills, California, decided that no one would be permitted to smoke in any Beverly Hills restaurant.

The result: Business in the city's restaurants dropped 30 percent. Linen suppliers, food distributors, and other related businesses suffered as well. Public outcry soon led to the amendment of the law, allowing smoking and non-smoking sections.

The Beverly Hills City Council had been taught a lesson: Restaurant smoking bans are doomed to fail.

It is a lesson that obviously also has been learned in neighboring Los Angeles. Councilman Marvin Brande of that city (14th District) failed recently to push through a law that would ban all smoking in Los Angeles restaurants.

Restaurant smoking bans are doomed to fail because they do not meet the first test of any proposed legislation: Is the new law necessary?

According to Rush Cole, former executive director of the Beverly Hills Restaurant Association, restaurant smoking bans are more than unnecessary—they are redundant.

"If there is one industry committed to accommodating clients," Cole said in testimony before the L.A. City Council, "it's the restaurant business. If customers really wanted to end smoking in restaurants, you wouldn't need an ordinance; the restaurants would rush to stop smoking."

The L.A. City Council apparently found Cole's simple reasoning hard to argue with.

The fact is no one—other than committed anti-smoking activists—wants to see smoking banned in restaurants. The public does not want it. The restaurant owners certainly do not want it. As one restaurant noted, there are plenty of non-smoking restaurants already, especially in California. Diners who do not want to be exposed to cigarette smoke are free to patronize them.

Most restaurants, however, do all they can to accommodate both their smoking and non-smoking patrons. They do this for the same reason they offer decaffeinated coffee and low-calorie sweeteners: They are in the business of satisfying their customers.

Restaurant smoking bans are doomed to fail. Fortunately the L.A. City Council learned the lesson of Beverly Hills in time.

## VIEWPOINTS

## ONE-WAY FLIGHT

The airline smoking ban is intolerable, and I believe it infringes on my constitutional right to travel without restriction.

I have lived on the West Coast for 25 years; my family lives in upstate New York. During all these years, I have flown east to visit on an average of once every 15 months. We had expected to go east late last summer, but we had to change our plans because there was not even one flight across this country on which we could smoke! I could not have been surprised if the airlines had scheduled a certain number of flights that were strict non-smoking. I could not have been surprised if these even comprised the majority of the flights.

But to ban smoking altogether discriminates against an entire segment of the population. Surely it must be possible to schedule at least one cross-country flight a week on which smokers are permitted?

I am sure I am not alone in feeling totally discriminated by these new rules. Freedom is not a one-way street—I want some, too.

ANN L. BENNETT

SQUILLA, CA

*Editor's note: Sen. Frank Lautenberg (DNJ) sponsored the federal legislation that banned smoking on domestic flights. You can write to him at 717 Hart Senate Office Building, Washington, DC 20510.*

## ALL SIDES CONSIDERED

As a pipe smoker, I am getting fed up with the push to outlaw smoking. I refuse to make purchases from many stores with anti-smoking policies. Perhaps some smokers have brought these discriminatory policies on themselves, but all it takes to remedy the situation is some consideration for other people.

In nearby Joplin, Missouri, the Dillon supermarket chain asks that smokers be considerate of others. A Joplin physician's office has a glassed-in, ventilated area in the waiting room for patients who smoke, or, for those who smoke who are accompanying patients.

All it takes is consideration for other people. I know many people are irritated by tobacco smoke. When I go to the homes or ride in the cars of friends who do not smoke, I do not smoke out of consideration for them. I am their guest, and I feel I owe them that much. While sitting in a restaurant recently, a family at a nearby table obviously was irritated by my smoking. When I noticed it (they had said nothing to me), I put down my pipe until they had left the restaurant.

But it's time to put a stop to the demands of those who wish to control everyone else. I talk with my legislators, and Kansas has not passed a smoking ban. Others can do the same.

RAEL F. ASKIS

OKSWAY, KS

**SIGN OF THE TIMES**

Please tell me how I can get the red-and-green Accommodation Program logo shown in the July-August issue ("Pitsburgh Patrons See Signs of Hospitality") for my office. It symbolizes something I feel is important to express.



The new accommodation position held by antismokers continues to spread in our society. They promote it ad nauseam. And our legislators increasingly are seeking votes by stating, "We are treating you badly because we love you." In spite of their good intentions, it is too coercive of inspiration mentality.

Wishing the Accommodation Program success,

EDWARD A. PANTELLA  
RIDGE CREST, CA

*Editor's note: The distinctive logo can be obtained by writing to Accommodation Program, One Gateway Center, Suite 2000, Pittsburgh, PA 15222.*

**STANDING TALL.**

We need more magazine articles about the erosion of our rights as Americans. More and more, our rights are being invaded and taken away.

We need to be informed of what action the government is taking so that we can stand up and defend our rights. We can't become unconscious Americans. We must stand up and fight for what we believe in! After all, isn't that how this country was built?

WENDY S. LAROCHE  
SCARBOROUGH, NY

**THAT'S THE TICKET!**

Happiness to me would be if I were to win the lottery, to buy the company I used to work for—and from which I was fired for being a smoker—and then to fire the man who fired me.

ILLIAN SIBILA  
CANTON, OH

*Editor's note: Smokers who have been the victims of job discrimination should write to: Philip Morris Magazine, Executive Edition, 120 Park Ave., 11th Floor, New York, NY 10017.*

**AN ENLIGHTENING IDEA**

Now is the time for someone to tap the potential market among the 50 million American smokers for smokers' travel agencies and smokers' travel magazines. Let's hope some budding entrepreneurs will light up to that idea.

MARGARET-MARY DEL TUTO  
NORTH MYRTLE BEACH, SC

**PERSPECTIVES****'SOCIAL COSTS' DON'T ADD UP**

*Question: When is a social cost not a social cost?*

*Answer: When it is a private cost.*

The prevailing may seem obvious, but it is a distinction that is being lost all too often lately in the debate on the so-called social cost of smoking.

The social cost theory is put forward by those who think that smokers should pay higher consumer excise taxes because, they claim, smokers are less productive than nonsmokers, absent from work more often, and run up higher medical bills.

Robert D. Tollison, professor of economics at George Mason University, describes such arguments as "marred by confusion and fallacy."

Dr. Tollison is being generous. The social cost theory has more holes in it than Swiss cheese.

To begin with, some studies, such as a 1984 University of Minnesota study, find smokers to be more productive than nonsmokers.

The research arm of the U.S. Chamber of Commerce recently conducted a study to determine if a worker's state of absenteeism could be predicted based on personal habits, such as smoking, drinking, and exercising. It found that only exercise "proved to be significantly associated with absenteeism." The more an employee exercised, the better his or her job attendance.

As for medical bills, smokers bear the burden of their own medical expenses just as nonsmokers do, through their private health insurance premiums and tax payments.

Moreover, the social cost theory can be applied to almost any group or activity. Obesity supposedly "costs" society \$27 billion a year, according to *American Demographics* magazine. Should we tax overweight people? *The Alcoholity and Mortality Weekly Report* states that injuries resulting from sliding into base playing softball "cost" society at least \$2 billion a year. How about taxing weekend softball games?

The basic flaw of the social cost theory is the idea that people are the property of their employers and of the state—and that what they do privately is anyone else's business.

"It is totally inappropriate to treat individuals like machines that have broken down, bringing economic loss to their owners," Dr. Tollison writes. This analysis "is not relevant for the inhabitants of a free society."

**3-11-91**

**Exhibit 11 also contains copies of the Montana Constitution, Art. II, sec. 4 and the Montana Clean Indoor Air Act. The originals are stored at the Montana Historical Society, 225 North Roberts, Helena, MT 59601. (Phone 406-444-4775)**



Written testimony on HB 860 hearing was on 3/11/91 Senate room 3:00pm and started at 4:35pm.

From: Susan Meyer

Since I was unable to finish my testimony due do lack of time I was told to send it in. The hand outs I submitted includes the Constitution of the United States, and also the method of how the smoking issue was handled by the Department of Revenue.

Smoking is a social condition: It has been carried down from prior generations where smoking was commonly accepted and promoted. The U.S. Government even supported and condoned smoking by supplying and transporting ration packs containing tobacco or cigarettes to soldiers in foreign areas.

To delete smoking entirely within the world will take many generations and cannot be expected to be wiped out in one generation. Lets clean up the drugs, aids, cancer, smoke stacks, carbon monoxide do to vehicles, wood smoke, etc. The list is to long.

We the smokers are taxed by federal government and state government (which has already been mentioned here) but I would like to add, will every smoker get to deduct from their taxes the amount we pay per pack since we may not be able to smoke in State Buildings ?

There is already a law about smoking in buildings, and everybody acts like they didn't even know about it. The law should #1 be removed, or left as is, but who will make it mandatory for departments to have available smoking rooms ? With these add ons it makes the law more unstable, unclear. The State cannot designate a cafeteria a smoke room. These people lease a part of a State Building they are not state employees.

How many non-smokers go in bars and don't even complain about the smoke, but then turn around and complain at work. What the state needs is better ventilation in buildings. Why can't a person smoke if they have there own office with a window and a smokeless ashtray ?

Since chewing tobacco is a tobacco product will this be banned from state buildings ? If not then we should be allowed to smoke.

With this bill no one considered the State Employee, it was scheduled with one days notice and a time set for 3:00pm. At lease with the pay hearing it was set in an evening.

SENATE HEALTH & WELFARE

EXHIBIT NO. 12

DATE 2/11

H BILL NO. 360

copy to

February 26, 1991

The Honorable Tom Dowell  
Montana House of Representatives  
State Capitol  
Helena, MT 59601

Dear Mr. Dowell:

On Tuesday, February 19th, I had an opportunity to visit our State Capitol.

While I was there I noticed that there were many provisions for the handicapped such as ramps, elevators, etc., so that they may participate in State Government. However, for those particular individuals who may have a handicap such as asthma, emphysema or an intolerance in general to smoke, there are absolutely no provisions. The entire Capitol building was a smoky fog! I feel that you are discriminating against these people and barring them from participating in our State Government. Not to mention the health hazard that is being created for everyone. I believe smoking should be prohibited in all government buildings that are open to the public.

I observed several groups of students from around the state visiting and touring the Capitol. Our government leaders should be setting a good example for our young people and our other citizens. Smokers can postpone their smoking, I can not postpone my breathing!

Hopefully our legislators will address this issue.

Sincerely,

  
Barry S. Moore

Box 345  
Cassida 59421

# MONTANA CONSTITUTION

3

## DECLARATION OF RIGHTS

Art. II, § 3

26. Trial by jury.
27. Imprisonment for debt.
28. Rights of the convicted.
29. Eminent domain.
30. Treason and descent of estates.
31. Ex post facto, obligation of contracts, and irrevocable privileges.
32. Civilian control of the military.
33. Importation of armed persons.
34. Unenumerated rights.
35. Servicemen, servicewomen, and veterans.

SENATE HEALTH & WELFARE

EXHIBIT NO. 13

DATE 3/11

H BILL NO 860

**Section 1. Popular sovereignty.** All political power is vested in and derived from the people. All government of right originates with the people, is founded upon their will only, and is instituted solely for the good of the whole.

### Cross-References

- Self-government, Art. II, sec. 2, Mont. Const.
- Right of participation in governmental affairs, Art. II, sec. 8, Mont. Const.
- Right to know, Art. II, sec. 9, Mont. Const.
- Right of suffrage, Art. II, sec. 13, Mont. Const.
- General government, Art. III, Mont. Const.
- Constitutional revision, Art. XIV, Mont. Const.
- Government Structure and Administration, Title 2.
- Basic political rights, Title 48, ch. 1, part 2.

### Constitutional Convention Transcript Cross-References

- Adoption, Trans. 2933, 2934.
- Committee report, Vol. II 620, 628, 967, 962, 967, 969, 1038.
- Cross-references, 1889 and 1972 Constitutions, Vol. II 646.
- Debate — committee report, Trans. 1635, 1636.
- Debate — style and drafting report, Trans. 2476, 2971.
- Final consideration, Trans. 2627, 2628.
- Text as adopted, Vol. II 1067.

**Section 2. Self-government.** The people have the exclusive right of governing themselves as a free, sovereign, and independent state. They may alter or abolish the constitution and form of government whenever they deem it necessary.

### Cross-References

- Popular sovereignty, Art. II, sec. 1, Mont. Const.
- General government, Art. III, Mont. Const.
- Local government, Art. XI, Mont. Const.
- Constitutional revision, Art. XIV, Mont. Const.
- Constitutional Convention Transcript Cross-References
- Adoption, Trans. 2933, 2934.

- Committee report, Vol. II 620, 628, 967, 962, 967, 969, 1038.
- Cross-references, 1889 and 1972 Constitutions, Vol. II 646.
- Debate — committee report, Trans. 1636.
- Debate — style and drafting report, Trans. 2476, 2971.
- Final consideration, Trans. 2628, 2629.
- Text as adopted, Vol. II 1067.

**Section 3. Inalienable rights.** All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities.

### Cross-References

- Right to bear arms, Art. II, sec. 12, Mont. Const.
- Environment and natural resources, Art. IX, Mont. Const.

- Department of Health and Environmental Sciences, Title 2, ch. 13, part 21.
- Department of Agriculture, Title 2, ch. 14, part 30.

DATE: 3-11-91

COMMITTEE ON Public Health, Welfare & Safety

HB 378, 849, 860

## VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Bob Moon	Some Health Dept	378		✓
Liter Spence	Self	860	✓	
Charles R. Brunk	MT Rtd. Assoc	849	✓	
MIKE MALES	Self - Person	378		✓
MIKE MALES	" "	849	✓	
Robert Shurl	" Health	849		
Bill Stevens	MT Food Diet Hse	378	✓	
Virginia Anderson	Tobacco Industry	378	✓	
Paula Korman	MT Council for Maternal Child Health	849		✓
" "	"	849	✓	
" "	"	860	✓	
Anna Valimaty	Self	849	✓	
Jack Thomas	Business Long Assn	378	✓	
DAVID E. ELLISON	U. S. Town	860		✓
TIM DAWELL	HDS	860	✓	
GENE PHILLIPS	SUNBELT TNA Council	378	X	
Stan Brackhaus	Self	860	✓	
Gene Jensen	MEIC	860	X	
Levi T. Jerschal	MT. Med Assoc	849	✓	
Sam D. Odom	PM	378	X	
Joel Smith	DB	849	X	
D. Elizabeth Keith	Healthy Mothers, Healthy Babies	849	X	
D. Elizabeth Keith	Healthy Mothers, Healthy Babies	378		X
Cheryl Wimmer	Mont. Breast Cancer Com.	378	✓	
Roger Tippy	RJ Reynolds	378	✓	

(Please leave prepared statement with Secretary)