

## **MINUTES**

### **MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION**

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

**Call to Order:** By Senator Dorothy Eck, Chair, on March 29, 1993,  
at 1:40 p.m.

#### **ROLL CALL**

**Members Present:**

Sen. Dorothy Eck, Chair (D)  
Sen. Eve Franklin, Vice Chair (D)  
Sen. Chris Christiaens (D)  
Sen. Terry Klampe (D)  
Sen. Kenneth Mesaros (R)  
Sen. Tom Towe (D)

**Members Excused:** Sen. Tom Hager, Sen. David Rye

**Members Absent:** None.

**Staff Present:** Tom Gomez, Legislative Council  
Laura Turman, Committee Secretary

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

**Committee Business Summary:**

Hearing: none.  
Executive Action: HB 548

#### **EXECUTIVE ACTION ON HB 548**

**Discussion:**

Chairman Eck said there was an amendment offered by the Department of Revenue. (Exhibit #1) Chairman Eck said the sponsor of the bill explained during the hearing that taking Section 9 out of HB 548 was a clerical error.

Bill Kloker, Business Tax Bureau of the Department of Revenue, said the reason for the amendment was to align the bill with other cigarette tax bills.

**Motion/Vote:**

Sen. Christiaens moved the amendments from the Department of Revenue. (Exhibit #1) The motion carried UNANIMOUSLY.

**Discussion:**

Sen. Klampe said the amendment to reinstate Section 9 was part of the amendments he offered. (Exhibit #2) Sen. Klampe suggested the amendments be segregated.

**Motion/Vote:**

Sen. Klampe moved to adopt amendment number five to reinstate Section 9 into HB 548. (Exhibit #2) The motion carried UNANIMOUSLY.

**Discussion:**

Sen. Klampe said the first amendment would remove vending machines for cigarettes from grocery stores and restaurants. The second amendment replaces the original fines in HB 548. Sen. Klampe said all the amendments reinstate the language stricken in the House Committee.

Chairman Eck said there had been arguments on the Floor of the Senate by Sen. Lynch that the fines should be higher.

Sen. Klampe said the sixth amendment allows local governments to impose and enforce local controls.

**Motion:**

Sen. Christiaens moved to segregate the amendments. He would like the second amendment segregated from the rest.

**Discussion:**

Sen. Klampe said it might be easier to segregate all the amendments.

**Substitute Motion:**

Sen. Klampe moved the Committee adopt the first amendment. (Exhibit #2)

**Discussion:**

Sen. Towe asked if bars and casinos could sell cigarettes. Chairman Eck said they could sell them in vending machines.

Sen. Mesaros asked if all the amendments were placed in the bill in the House. Chairman Eck said that was correct.

Sen. Mesaros asked who had sponsored the amendments in the House. Sen. Mesaros said that Sen. Klampe's amendments take the bill back to its original form.

Sen. Towe excused himself, stating that he voted "yes" on all the

amendments.

Chairman Eck asked if there were anyone present who was familiar with the Synar Amendment. Sen. Klampe said the Synar Amendment provides conditions for receiving block grants to prohibit the sale or distribution of tobacco products to individuals under the age of 18 years old. Community programs must be enforced.

Chairman Eck said there was someone who testified during the hearing about enforcement, and how it was necessary to show that the law was enforceable.

Tom Gomez said there is a provision in the law relating to enforcement. The law provides that, as a condition to the receipt of funding, the state must enter a funding agreement for the grant that says the state will enforce the law. Enforcement must be done in a manner to reasonably expect the reduction in the availability of cigarettes to children under the age of 18. As a part of the agreement of the grant, the state involved must conduct random unannounced inspections for compliance with the law and must submit a report to the Department of Health and Human Services. In instances of noncompliance, a state will be sanctioned by not receiving an amount of funds, but there is an exception for states that do not have a legislative session meeting next year.

Sen. Klampe said prohibiting the sale of cigarettes in vending machines in grocery stores and restaurants addresses the law referred to by Tom Gomez.

Chairman Eck asked Mr. Kloker how the regulation of vending machines would be enforced. Mr. Kloker said with HB 548 it would be taken care of by the local county attorney. Three violations would result in the proprietor's license revocation.

Chairman Eck asked Mr. Kloker if a proprietor had a vending machine, and a young person were to get cigarettes out of it without a clerk seeing it, would that count as a violation. Mr. Kloker said according to HB 548 there could be a violation prosecuted through the county attorney's office, which would be one count against them.

Chairman Eck asked Mr. Kloker if there would be one count against the proprietor. Mr. Kloker said it was unclear if it was the mistake of the owner of restaurant or the owner of the vending machine. A violation against the vending machine itself would be a violation against the individual who owns the vending machine. No license can be suspended without a hearing first.

Chairman Eck asked Mr. Kloker about a situation with witnesses of three or four young people who bought cigarettes illegally and who would be charged. Would it be the owner of the vending machine or the establishment? Mr. Kloker said the owner of the vending machine would be charged.

Chairman Eck asked how that could be monitored.

Sen. Mesaros said there was no way this could be enforced.  
Chairman Eck agreed.

Sen. Klampe pointed out that, under Section 8, there was no violation for vending machine sales to individuals under 18.

Sen. Christiaens asked to whom "licensed holder" referred.

Chairman Eck said if the Committee adopted Sen. Klampe's amendment, there were still allowances for vending machines under direct supervision of an owner or employee.

Sen. Franklin asked if there had been testimony from establishment owners or vending machine owners. Sen. Franklin said they are the people who will have to enforce the law.

Sen. Mesaros said that reinstating all the stricken language would create many problems. Sen. Christiaens said establishment owners and vending machine owners probably didn't testify because the language had been stricken.

Sen. Franklin said she would resist amendments that would significantly change the body of the bill.

Sen. Christiaens said that by adopting the amendments, the bill could be lost.

Chairman Eck said the first amendment (Exhibit #2) was important, but the rest could be left.

Sen. Klampe said he'd spoken with the sponsor who said to adopt all the amendments because the federal money is needed.

Sen. Christiaens said the bill should be workable.

Sen. Klampe said there is a violation of the Synar Amendment, making cigarettes available to individuals under 18.

Sen. Christiaens said Sen. Klampe should look at the vote on SB 305, which was not solid. Sen. Christiaens said adopting the first two amendments would jeopardize the passage of HB 548.

Sen. Klampe asked Sen. Christiaens if he thought funding through the Synar Amendment was being jeopardized by making cigarettes available to those under 18 years of age in grocery stores.

Chairman Eck said in most stores, cigarettes are sold at the check out counter.

Sen. Franklin said she remembered testimony a couple of years ago from small retailers who were concerned about what "supervision" meant, and the burdens of criminality posed upon them.

Chairman Eck said this law could not be enforced.

**Motion:**

Sen. Mesaros moved that amendments 1, 2, 3 and 4 (Exhibit #2) not be adopted.

**Substitute Motion:**

Sen. Franklin moved to segregate the first amendment.

**Discussion:**

Chairman Eck said it would be best for Sen. Klampe to individually move the amendments do pass.

**Motion/Vote:**

Sen. Klampe moved the first amendment (Exhibit #2) be adopted. The motion PASSED 4-2 with Sen. Christiaens and Sen. Mesaros voting "no".

**Motion/Vote:**

Sen. Klampe moved the adoption of the second amendment. The motion FAILED 2-4, with Sen. Klampe and Sen. Towe voting "yes".

**Motion/Vote:**

Sen. Klampe moved the adoption of the third amendment. The motion FAILED 2-4, with Sen. Klampe and Sen. Towe voting "yes".

**Motion:**

Sen. Klampe moved the adoption of the fourth amendment.

**Discussion:**

Chairman Eck said she would vote no because the enforcement could be "stiffened up" at a later time if necessary.

Tom Gomez said it would be addressed in the grant agreement anyway.

**Vote:**

The motion to adopt the fourth amendment FAILED 2-4 with Sen. Klampe and Sen. Towe voting "yes".

**Motion:**

Sen. Klampe moved the adoption of the sixth amendment.

**Discussion:**

Sen. Klampe said the amendment restored local government controls to allow for more restrictions.

**Vote:**

The motion to adopt the sixth amendment FAILED 3-3, with Chairman Eck, Sen. Klampe and Sen. Towe voting "yes", Sen. Christiaens, Sen. Franklin and Sen. Mesaros voting "no".

**Discussion:**

Chairman Eck said there were more amendments offered by Sen. Towe. (Exhibit #3). Chairman Eck read the amendments.

Sen. Franklin said the amendments appeared to be technical amendments.

**Motion/Vote:**

Sen. Franklin moved amendments 1-6 be adopted. (Exhibit #3) The motion carried UNANIMOUSLY.

**Discussion:**

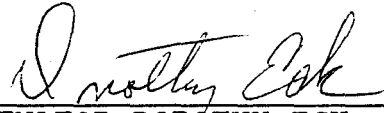
Chairman Eck asked whether the bill covered the sale of single cigarettes in convenience stores. Paulette Kohman, Healthy Mothers, Health Babies, said that was included in the bill.

**Motion/Vote:**

Sen. Klampe moved HB 548 BE CONCURRED IN AS AMENDED. The motion carried UNANIMOUSLY. Sen. Klampe will carry the bill on the Floor of the Senate.

ADJOURNMENT

**Adjournment:** Chairman Eck adjourned the meeting.



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SENATOR DOROTHY ECK, Chair



\_\_\_\_\_  
LAURA TURMAN, Secretary

DE/LT

# ROLL CALL

SENATE COMMITTEE Public Health DATE 3-29-93

[illegible]

SENATE STANDING COMMITTEE REPORT

Page 1 of 3  
March 29, 1993

MR. PRESIDENT:

We, your committee on Public Health, Welfare, and Safety having had under consideration House Bill No. 548 (third reading copy -- blue), respectfully report that House Bill No. 548 be amended as follows and as so amended be concurred in.

Signed: \_\_\_\_\_

*Dorothy Eck*  
Senator Dorothy Eck, Chair

That such amendments read:

1. Title, line 13.

Following: "7"

Insert: "PROHIBITING THE USE OF TOBACCO PRODUCTS ON PUBLIC SCHOOL PROPERTY;"

2. Page 1, line 18.

Strike: "10"

Insert: "11"

3. Page 2, line 7.

Strike: "10"

Insert: "11"

4. Page 2, line 12.

Following: "deliver,"

Insert: "sample,"

5. Page 2, line 13.

Following: "deliver,"

Insert: "sample,"

6. Page 2, line 14.

Following: "deliver,"

Insert: "sample,"

7. Page 2, line 15.

Following: "deliver,"

Insert: "sample,"

8. Page 3, line 2.

Following: "substance"

Insert: "intended for human consumption"

9. Page 3, line 8.

Following: "license"

Insert: "obtained from the department of revenue"

*AP*  
Amd. Coord.  
Sec. of Senate

*Sen. Klarnase*  
Senator Carrying Bill

701828SC.San

10. Page 3, lines 11 through 13.

Following: "fee" on line 11

Strike: remainder of line 11 through "[sections 1 through 8]" on line 13

Insert: "of \$5 per year or fraction of a year for each premise or location at which tobacco products are sold at retail. A license is effective from the date of issuance to July 1 following the date of issuance. The license is a personal privilege and not a right and is not transferable or assignable in any manner"

11. Page 4, line 13.

Following: "and"

Insert: "and"

12. Page 4, lines 14 and 15.

Strike: subsection (3) in its entirety

Renumber: subsequent subsection

13. Page 8, line 8.

Following: line 7

Insert: "NEW SECTION. Section 9. Use of tobacco product in public school building or property prohibited. (1) An individual may not use a tobacco product in a public school building or property during school hours.

(2) Subsection (1) does not apply to the use of a tobacco product:

(a) in a classroom or on other school property as part of a lecture, demonstration, or educational forum sanctioned by a school administrator or faculty member concerning the risks associated with use of a tobacco product;

(b) as a part of a play, performance, or other theatrical event sanctioned by a school administrator or faculty member; or

(c) after school hours by persons in a tobacco, alcohol, or drug rehabilitation, counseling, or control group using school facilities for a meeting or event that is in furtherance of the group's goals and that is sanctioned by a school administrator or other public official.

(3) The principal of an elementary or secondary school, or the principal's designee, may enforce this section.

(4) For the purposes of this section, the following definitions apply:

(a) "Public school building or property":

(i) means public land, fixtures, buildings, or other property owned or occupied by an institution for the teaching of minor children that is established and maintained under the laws of the state of Montana at public expense; and

(ii) includes school playgrounds, school steps, parking lots, administration buildings, athletic facilities, gymnasiums, locker rooms, stadiums, and school buses.

(b) "Tobacco product" means a substance intended for human consumption that contains tobacco, including cigarettes, cigars, snuff, smoking tobacco, and smokeless tobacco."

14. Page 8, line 10.

Strike: "8"

Insert: "9"

15. Page 8, line 11.

Strike: "8"

Insert: "9"

-END-

Amendments to House Bill 548  
Third Reading Copy

Prepared by Department of Revenue  
(3/23/93)

1. Page 3, line 11.

Following: "fee"

Strike: "to be set by the department by rule. The fee must be commensurate with the department's costs of administering [sections 1 through 8]."

Insert: "for each premise or location at which tobacco products are sold at retail of \$5 per year or fraction of a year. A license shall be effective from the date of issuance to July 1 following the date of issuance. The license is personal privilege and not a right which is not transferable or assignable in any manner."

**Reasons for the amendment:** This amendment is to clarify the annual license for the retail sale of tobacco products. The Department estimates it will cost \$5 per license to administer the licensing of each retail premise or location for the sale of tobacco products and for the Department to comply with other requirements of this bill. Also, this amendment will eliminate the administrative cost and possible litigation involved in setting the license fee by rulemaking. The amendment clarifies the license to specify that it is not a right but a privilege to sell tobacco products.

## Amendments to HB 548

Proposed by Montana Council for Maternal and Child Health

3/26/93

1. Page 4, line 13, following " access;" insert "and"  
Page 4, lines 14-15: Strike in their entirety.  
Page 4, line 16: Strike "(4)", and replace it with "(3)"
2. Page 5, line 9, strike "\$200" and replace it with "\$250"  
Page 5, line 11, strike "\$300" and replace it with "\$500"  
Page 5, line 13, strike "\$500" and replace it with "\$1000"  
Page 5, line 17, strike "\$100" and replace it with "\$300"  
Page 5, line 19, strike "\$200" and replace it with "\$500"  
Page 5, line 20, strike "\$500" and replace it with "\$1,000"
3. Page 5, line 21, insert:  
"(b) For a third or subsequent violation of [section 7] by a person licensed under [section 3], the license may be suspended or revoked for not more than 1 year after a hearing in accordance with the contested case provisions of the Montana Administrative Procedure Act."
4. Page 6, line 7, after "(5)" insert "(a)"  
Page 6, line 10, insert:  
"(b) The department shall suspend the person's license for:  
(i) 7 days if the civil penalty imposed was for a second violation within a 1-year period;  
(ii) 1 to 6 months if the civil penalty imposed was for a third violation within a 2-year period; and  
(iii) 9 to 18 months if the civil penalty imposed was for a fourth or subsequent violation within a 2-year period.  
(c) If, within a 2-year period, civil penalties are imposed for three or more violations of [section 5(1)] at each of three or more premises under common ownership or control, the department shall suspend all licenses issued to all premises under that common ownership for a period of 9 to 18 months.
5. Page 6, line 24, insert:  
"NEW SECTION. Section 9. Use of tobacco product in public school building or property prohibited. (1) An individual may not use a tobacco product in a public school building or property during school hours.  
(2) Subsection (1) does not apply to the use of a tobacco product:  
(a) in a classroom or on other school property as part of a lecture, demonstration, or educational forum sanctioned by a school administrator or faculty member concerning the risks associated with use of a tobacco product;  
(b) as a part of a play, performance, or other theatrical event sanctioned by a school administrator or faculty member; or

(c) after school hours by persons in a tobacco, alcohol, or drug rehabilitation, counseling or control group using school facilities for a meeting or event that is in furtherance of the group's goals and that is sanctioned by a school administrator or other public official.

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(ii) includes school playgrounds, school steps, parking lots, administration buildings, athletic facilities, gymnasiums, locker rooms, stadiums, and school buses.

(b) "Tobacco product" means a substance that contains tobacco, including cigarettes, cigars, snuff, smoking tobacco, and smokeless tobacco."

6. Page 8, line 10, following "that are" insert "at least as"

Page 8, line 10, strike "NO MORE"

Page 8, line 11, following "stringent" insert "as"

Page 8, line 11, strike "THAN"

## Amend House Bill 548, Third Reading Copy

1. Page 2, line 12.  
Following: "deliver"  
Insert: "sample"
2. Page 2, line 13.  
Following: "deliver"  
Insert: "sample"
3. Page 2, line 14.  
Following: "deliver"  
Insert: "sample"
4. Page 2, line 15.  
Following: "deliver"  
Insert: "sample"
5. Page 3, line 2.  
Following: "substance"  
Insert: "Intended for human consumption"
6. Page 3, line 7.  
Following: "license"  
Insert: "obtained from the department of revenue"