

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By CHAIRMAN JOHN HERTEL, on March 7, 1997, at
9:00 A.M., in ROOM 410.

ROLL CALL

Members Present:

Sen. John R. Hertel, Chairman (R)
Sen. Steve Benedict, Vice Chairman (R)
Sen. Debbie Bowman Shea (D)
Sen. William S. Crismore (R)
Sen. C.A. Casey Emerson (R)
Sen. Bea McCarthy (D)

Members Excused: None

Members Absent: None

Staff Present: Bart Campbell, Legislative Services Division
Mary Gay Wells, Committee Secretary

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 310; HB 330; HB 331;
2/24/97
Executive Action: SB 89; HB 262; HB 266; HB 310;
HB 330; HB 331; HB 350
SB 242; 243; 312 TABLED

HEARING ON HB 331

Sponsor: REP. LOREN SOFT, HD 12, BILLINGS

Proponents: Mona Jamison, MT Chapter, American Lung
Association
Mark Staples, Vending Machine Operators
Darryl Bruno, Asst. Administrator, Addictive &
Mental Disorders Division, DPHHS
Barbara Guthneck, Libby

Opponents: None

Opening Statement by Sponsor:

REP. LOREN SOFT, HD 12, BILLINGS. I bring before you HB 331 which amends the Youth Access to Tobacco Control Act. There has been a great deal of work on this bill that was done in the House committee as well as an amendment on the House floor. There was consensus reached by several different groups that this bill impacts including tavern owners, vending machine operators, tobacco people, etc. There was consensus as we worked through this process and we made a slight change in the current access of tobacco products by teens. It strengthens the Act and puts us one more step toward curbing teens from smoking. Tobacco use is the single most preventable cause of death in the U. S. It accounts for every one of five deaths according to the 1991 Control of Disease Center report. About one million teens begin smoking each year. HB 331 is another step in reducing these statistics at least here in Montana. HB 539 which I carried in 1995, addressed the laws which were on the books before but had never been enforced. We tried to put the enforcement into an educational process. We were able to use teens along with supervisors to do compliance checks where tobacco products were being sold and we talked to those people if they didn't ask for an ID on a teen as they were in violation of the law. This started to work here in Montana. It appears that we have dropped teen tobacco use by about 13 to 15%. Teens, through studies, have been found to have ready access to tobacco products at will through vending machines. This bill is backed by many of those who are involved in the selling of these tobacco products. There is one amendment (EXHIBIT 1).

The essence of the bill is found on the top of page 2. It states that tobacco products may be sold in vending machines only in places where alcoholic beverages are sold and consumed on the premises and where the vending machine is under the direct line-of-sight supervision of the owner or an employee of the establishment. The tobacco products must be in a vending machine that contains only tobacco products. Tobacco products may not be sold through a vending machine that is located in a restaurant unless the restaurant has a bar, the restaurant area shares seating with the bar area, and the vending machine meets the requirements of subsection (1).

Proponents' Testimony:

Mona Jamison, MT Chapter, American Lung Association. We stand in strong support of this bill. This bill reflects the compromise of proponents and opponents who are here today to support this bill. It reflects the process and as you know I am always happy to see the process work. There is an amendment to the bill which I shared with Mark Staples. He agrees that the amendment should be in. It just restores language that should stay in the bill for clarity. We urge that amendment. There are many here in support of the bill.

Mark Staples, representing the Vending Machine Operators. For the sake of the committee, I may be able to clarify how those, at first blush as opponents, would come to a point where they are now proponents of the bill. That is based on the testimony that was provided at the hearing that certainly supported the intent of the bill and the purpose to prohibit access to tobacco products by youth which all in the industry do support. They recognize and take responsibility for the fact that some vending machines are in unsupervised places where there is a steady traffic of youth. They have willingly agreed to limit these vending machines only to bars and taverns under the supervision of the owner or employee.

Darryl Bruno, Asst. Administrator, Addictive & Mental Disorders Division, DPHHS. I will give my testimony and hand in the written testimony (EXHIBIT 2).

Barbara Guthneck, Libby. I am here in support of the bill.

Opponents' Testimony: None

Questions From Committee Members and Responses:

SEN. DEBBIE SHEA asked about the amendment and where the vending machines in a tavern could be place and still not be out of sight of the owner or employee? **Mr. Staples** replied that it could be a problem but it is a responsibility. It has been in the law and is not new. It was always direct supervision whether it was enforced or not. As their representative, I don't see how they can shirk their responsibility. **SEN. SHEA** continued with another question that the product could end up behind the bar? **Mr. Staples** replied that could be the case.

SEN. BEA MCCARTHY asked if this would decrease the number of vending machines that will be available in the state, and in relation to that, who owns the machines? **Mr. Staples** replied yes, and for the most part, the vendor owns the machines.

SEN. STEVE BENEDICT wondered how many machines are in service stations, restaurants, hotel lobbies, etc. that are going to have to be shelved. **Mr. Staples** replied that although there are a number of them that will go, something under 5%, the vendors themselves said that because of their responsibilities, and the penalties involved prior to this legislation, that they had been increasingly removing them from all but bars and taverns anyway. In bars and taverns is where they would have the protections of the age-access in the first place with the direct supervision but there didn't seem to be a way to work it out with the hotels.

SEN. BENEDICT asked how many tobacco vending machines are in the state and how many have a combination of tobacco and candy in them? **Mr. Bill Kloker, Dept. of Revenue,** answered that there are 557 machines that sell tobacco. This includes those that sell

only tobacco product and those that sell tobacco and other things. They all are licensed in the state.

SEN. SHEA asked if there is a fiscal impact on the state? Mr. Kloker replied that the Dept. is not sure at this time. The total revenue that the vending machines bring in is \$1,375 per year. A vender that has over 10 machines, their license per year is \$50. A vender for under that number is \$5 per machine per year.

Closing by Sponsor:

REP. SOFT closed. The cost to Montana under Medicaid for tobacco related illnesses per year is \$12 million. In Montana we have over 3,000 youth that start smoking each year. We just want to try and curb that some and hold down the health care costs. Thank you for the opportunity to bring this before you. I urge your concurrence.

{Tape: 1; Side: A; Approx. Time Count: 9:28 AM; Comments: A TWO MINUTE BREAK WAS TAKEN.}

HEARING ON HB 310

Sponsor: REP. ROBERT PAVLOVICH, HD 37, BUTTE

Proponents: Mysta Tucker, MT Beer & Wine Wholesalers
Tom Hopgood, MT Beer & Wine Wholesalers
Steve Browning, representing Anheuser-Busch
Gary Blewett, Department of Revenue

Opponents: None

Opening Statement by Sponsor:

REP. ROBERT PAVLOVICH, HD 37, BUTTE. HB 310 deals with beer price fixing. Two years ago we had this same bill in here. We passed it out and ended up with a little leak in the dam. We need to plug the dam up a bit. The new language on page 2 clarifies what has been happening. There is a brewer in the state who figured out how he could get around the beer price fixing. There are some proponents. My written testimony will be submitted (EXHIBIT 3).

Proponents' Testimony:

Mysta Tucker, MT Beer & Wine Wholesalers. We agree that HB 310 needs to be passed. As independent business people, we believe we have the right to set our own pricing. Thank you.

Tom Hopgood, MT Beer & Wine Wholesalers. As REP. PAVLOVICH said, this bill grows out of a bill that was heard before this committee in the last session which grew out of a problem that we

were having with the breweries in retaliatory pricing. They would recommend a price to the wholesaler and then the wholesaler would not follow that recommendation. The brewer would then impose a retaliatory price increase. Everyone was clear on the statement of that bill. One brewer has arguably figured out a way around this and that is to say, here is our recommended price and, oh by the way, if you don't follow this recommended price, we won't give you any promotional discounts. To me, this is price fixing. We have been in communication with the Dept. of Revenue, the Liquor Division about this problem and they have, at least, agreed with our informal interpretation of this action. The brewer disagrees and there is a little bit of wiggle room in there that can be made so our alternative is to bring a lawsuit against the brewer for a declaratory judgment which would take at least a year or two, but we feel the easier way to handle this was to come back and make a simple change to the original bill and provide that it is unlawful for a brewer to link his participation in a promotional discount following a recommended price. The industry has been included in the preparation of this bill and they are in support of this bill. One brewer, Anheuser-Busch in particular, in a promotional discount, does require that the discount that it gives to the wholesaler be passed on to the retailer. This bill is not aimed at that. We view that as a condition of the discount rather than the fixing of a price. I will hand in my written testimony (**EXHIBIT 4**). I will also hand in a letter from my firm to the Liquor Division as pertinent information (**EXHIBIT 5**). Thank you.

Steve Browning, Anheuser-Busch. We appear in support of HB 310 and recommend the committee be concurred in HB 310. The whole topic of this bill is very complicated for the lawyers to deal with. When you look at the bill, we are dealing with existing law. On line 12, the title says it all--illegal acts by brewers. Anheuser-Busch does not want to do anything that is illegal so we are very sensitive to make sure that what they are doing is legal and they want to make sure that when the laws are changed that they are in compliance with the law. We appreciate **Mr. Hopgood's** reference to the concerns that Anheuser-Busch raised. I would like to read a short paragraph from the A-B legal counsel describing what their practice is. "Anheuser-Busch does participate in price promotions in Montana making special allowances that are offered to Montana wholesalers. In the course of pricing, A-B sets out a recommended price to the retailer to the wholesaler (PTR--price to retailer). During the promotion we offer the wholesaler an opportunity to discount the product. In the course of offering the discount, we advise the wholesaler that we will share in the cost of the discount on a 50-50 basis up to a stated maximum amount per case of beer depending upon the brand. This 50-50 split is contingent upon the wholesaler passing the discount down to the retail level. The wholesaler is free to choose to what extent, if any, they will participate in the retail promotion that A-B offers." I appreciate your listening to our testimony.

Opponents' Testimony: None

Informational Testimony:

Gary Blewett, Administrator, Liquor Division, Dept. of Revenue.

I am not appearing as a proponent per se, but wanted to be on the record that Mr. Browning did send me a copy of the paragraph that he just read to you. We evaluated the paragraph in light of the proposed change and the existing law and found nothing in that paragraph that would be in violation of this piece of legislation.

Questions From Committee Members and Responses:

SEN. BEA MCCARTHY asked if there was a contract between wholesaler and retailer. REP. PAVLOVICH replied that there is not a contract. There is a seven day law that we have to pay for our order and we can buy from any wholesaler in the state.

Closing by Sponsor:

REP. PAVLOVICH closed. I thank you for a fine hearing and you won't be seeing me again in your committee.

{Tape: 1; Side: A; Approx. Time Count: 9:40 AM; Comments: N/A.}

HEARING ON HB 330

Sponsor: REP. WILLIAM WISEMAN, HD 41, GREAT FALLS

Proponents: Nathan Tubergen, MMIA
Bob Worthington, MMIA
Howard Bailey, Schools Group Workers Compensation Program

Opponents: None

Opening Statement by Sponsor:

REP. WILLIAM WISEMAN, HD 41, GREAT FALLS. For those of you who were here two years ago, we met in an atmosphere of almost crisis when Orange County, California was going bankrupt because of their involvement of investments in derivatives. We did a survey of some counties here in Montana and found a lot of counties had been speculating with long term investments with short term money. They were trying to beat the market and what precipitated the crisis two years ago was the fact that the Federal Reserve felt the economy was getting to be too frothy. Mr. Greenspan tapped the breaks by raising interest rates and that caused the value of those long term bonds to drop. We changed considerably the law allowing not only what could county and city governments invest in but more importantly how long they could invest. We

felt that many of those people were fairly unsophisticated in handling big sums of money and were betting on the way interest rates were going and if they bet the right way it was wonderful, but when they bet wrong it caused some real concern. There are some people here to testify as to what is being proposed.

Proponents' Testimony:

Nathan Tubergen, Director, Finance Administrative Services, City of Billings, and Chairman, Finance Committee, Montana Municipal and Insurance Authority. One of the advantages of this bill is we are going from five years to ten years in allowing us to invest our funds. I have been a firm believer in my 29 years in government in the finance field, that this is not my money but the taxpayers' money and I must invest it wisely and make sure it is protected at the same time. I have not gotten into derivatives. I feel you can still do your job, generate the interest that is needed by using proven methods and doing the investing. I am asking for your support on this bill. It will do two things for us. When it comes to our general liability program, we have been in the program for approximately ten years. We are at the five year limit right now so what we have to do is pile all that money into a five year level. You can see that is detrimental at this point. With this bill we could go out to ten years and do a good float for our cash management and also be able to determine approximately what we are going to need for those liabilities out in the future for the claims that are out there. That is why we are here. By enabling us to go ahead and go the ten years, we can ladder our portfolio and be able to generate the interest income and do the best job and also protect the insurance authority itself. Thank you and I hope you can support the bill.

Bob Worthington, Program Administrator, Montana Municipal Insurance Authority. This bill does not change what we can invest in; it only changes the length of time that we might invest. With our nearly eleven years in the business, we found out that the tell on claims is substantially long and we know what our exposures are, but only being able to be out by five years it essentially hamstring what we can do with our investments. This would allow us to go out to ten years with only an average maturity of six years. It's not a dramatic change, but we would like the advantage this bill gives. It will help our program which is funded by the taxpayers of Montana.

Howard Bailey, Program Administrator, Schools Group Workers Compensation Program. The Schools Group Program has a majority of Montana schools in it and they provide the workers compensation coverage for the schools. HB 330 would give us another tool that we could use to save money for schools while still providing the protection that the Legislature has imposed on us in the past as far as the types of investments we can invest in. This would allow us to ladder the investments up to

ten years but with a six year average. Now we are very restricted. We would appreciate your support.

Opponents' Testimony: None

Questions From Committee Members and Responses:

SEN. CASEY EMERSON asked what the difference is between interest rates on a ten year and a five year treasury note? Mr. Tubergen said that it would be in the neighborhood of 1% or less. It depends again on the market. Right now the long term is down but looking at the long range it could be as high as 2%. It would be looked on as an extra yield by laddering.

Closing by Sponsor:

REP. WISEMAN closed. On the third page of the bill it shows the restrictions that were put on as to what investments could be made. The only group that we have let loose with this are on page 2, line 17 through 20. It is a very small group.

{Tape: 1; Side: B; Approx. Time Count: 9:49 AM; Comments: LOSE ONE SENTENCE OF CLOSING.}

The six year average will keep them from backloading the whole thing. Again, this is money that they may need at any one time so that is the reason we want them to have the ladder. It is a good program. Hope you can support the bill.

EXECUTIVE ACTION ON HB 330

Motion/Vote: SEN. STEVE BENEDICT MOVED HB 330 BE CONCURRED IN.
THE MOTION CARRIED UNANIMOUSLY: 6-0

EXECUTIVE ACTION ON HB 310

Motion/Vote: SEN. BEA MCCARTHY MOVED HB 310 BE CONCURRED IN.
THE MOTION CARRIED UNANIMOUSLY: 6-0

EXECUTIVE ACTION ON HB 331

Motion: SEN. MCCARTHY MOVED HB 331 BE CONCURRED IN.

Amendments: SEN. MCCARTHY MOVED TO AMEND HB 331 (EXHIBIT 6)
HB033101.abc.

Vote: THE MOTION TO AMEND HB 331 CARRIED with SEN. SHEA voting NO: 5-1.

Motion/Vote: SEN. MCCARTHY MOVED HB 331 BE CONCURRED IN AS AMENDED. THE MOTION CARRIED UNANIMOUSLY: 6-0

EXECUTIVE ACTION ON HB 262

Motion/Vote: SEN. WILLIAM CRISMORE MOVED HB 262 BE CONCURRED IN. THE MOTION CARRIED UNANIMOUSLY: 6-0

EXECUTIVE ACTION ON HB 350

Motion/Vote: SEN. BEA MCCARTHY MOVED HB 350 BE CONCURRED IN. THE MOTION CARRIED UNANIMOUSLY: 6-0

EXECUTIVE ACTION ON HB 266

Motion: SEN. DEBBIE SHEA MOVED HB 266 BE CONCURRED IN.

Amendment: SEN. STEVE BENEDICT MOVED TO AMEND HB 266 (EXHIBIT 7) hb026601.abc.

Vote: THE MOTION TO AMEND HB 266 CARRIED UNANIMOUSLY: 6-0

Motion: SEN. SHEA MOVED HB 266 BE CONCURRED IN AS AMENDED.

Discussion: SEN. EMERSON feels the state is being overloaded with licensing. SEN. SHEA felt that it would not require a lot of extra time for those who were checking licenses. SEN. HERTEL felt that the person doing the inspecting would also be able to check on the licenses.

Vote: THE BE CONCURRED IN AS AMENDED MOTION FOR HB 266 CARRIED with SENATORS EMERSON AND BENEDICT voting NO: 4-2

{Tape: 1; Side: B; Approx. Time Count: 10:00 AM; Comments: N/A.}

{Tape: 1;; Side: B; Approx. Time Count: 10:30 AM; Comments: A 30 MINUTE BREAK WAS TAKEN.}

CHAIRMAN JOHN HERTEL declared the committee back in Executive Action. He stated: Committee members, as you know, we have heard four different telecommunication bills in this session. In fact SB 89, SB 242 and SB 243 were held on January 31, 1997. SB 312 was held on February 14, 1997. With the information that I gave you yesterday, you probably noticed that the work that has been accomplished is attempting to make one bill out of the four

that we have heard. Various things were taken from SB 242, SB 243 and SB 312 and placed into SB 89. There were some changes in SB 89 as well. This is what we are dealing with this morning. First, we will act on SB 242, SB 243 and SB 312.

EXECUTIVE ACTION ON SB 242

Motion: SEN. WILLIAM CRISMORE MOVED DO PASS SB 242.

Discussion: SEN. BENEDICT wanted to know if there would be discussion on what went into SB 89. SEN. HERTEL felt that action should be taken on the first three bills.

Motion/Vote: SEN. CRISMORE MOVED TO TABLE SB 242. THE MOTION TO TABLE SB 242 CARRIED UNANIMOUSLY: 6-0

EXECUTIVE ACTION ON SB 243

Motion: SEN. BENEDICT MOVED DO PASS SB 243.

Discussion: SEN. CRISMORE stated that with what the committee has been working on over the past few weeks, we no longer need to have this bill around.

Motion/Vote: SEN. BENEDICT MOVED TO TABLE SB 243. THE MOTION TO TABLE SB 243 CARRIED UNANIMOUSLY: 6-0

EXECUTIVE ACTION ON SB 312

Motion: SEN. CASEY EMERSON MOVED DO PASS SB 312.

Discussion: There was no discussion.

Motion/Vote: SEN. EMERSON MOVED TO TABLE SB 312. THE MOTION TO TABLE SB 312 CARRIED UNANIMOUSLY: 6-0

EXECUTIVE ACTION ON SB 89

Motion: SEN. CRISMORE MOVED DO PASS SB 89.

Amendment: SEN. CRISMORE MOVED TO AMEND SB 89 (EXHIBIT 8) sb008901.agp.

Discussion: SEN. BENEDICT stated that he felt that things were rushed with some of the legislation we had in the committee and that was evident with the amount of testimony with all three bills and this endeavor is a much more prudent and reasonable course of action which will allow us to move into that telecommunications arena as it unfolds but without taking steps

that we might regret at a time down the road. I feel that they are very good amendments. **SEN. HERTEL** asked **Mr. Greg Petesch, Code Commissioner, Legislative Services Division**, to present and explain the amendments.

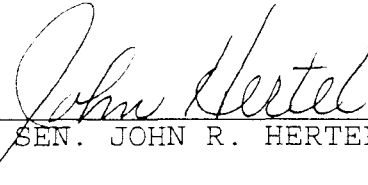
Mr. Petesch presented and explained the amendments to the committee. **SEN. MCCARTHY** asked about the yellow pages issue. **Mr. Petesch** replied that sections 19 and 24 do address the yellow pages issue. On page 22 and 23 is also part of it. This essentially takes out language in current law in section 24. **SEN. EMERSON** wondered about the universal services fund and asked if by having this fund do we have access to the national universal service if there are any funds there to be shared by Montana? **Mr. Petesch** said that the Montana fund is set up to be a compliment to the federal fund. **SEN. EMERSON** wanted to know if some oversight authority had been given to the PSC. **Mr. Petesch** said that yes the PSC has rule making authority to set up parameters for operation. The universal service fund in the amended bill is not set up as an interim universal service fund the way it was in the original SB 89. Every legislature will have the opportunity to come in and review this.

Vote: THE MOTION TO AMEND SB 89 CARRIED UNANIMOUSLY: 6-0

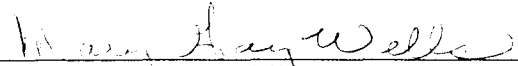
Motion/Vote: SEN. CRISMORE MOVED DO PASS AS AMENDED SB 89. THE MOTION CARRIED UNANIMOUSLY: 6-0.

ADJOURNMENT

Adjournment: 10:50 A.M.



SEN. JOHN R. HERTEL, Chairman



MARY GAY WELLS, Secretary

JH/MGW