

SENATE BILL NO. 286

1/30 Introduced
1/31 Referred to Public Health, Welfare & Safety
2/02 Fiscal Note Requested
2/08 Fiscal Note Received
2/20 Hearing
2/22 Adverse Committee Report
2/22 Bill Killed

1 Senate BILL NO. 286
 2 INTRODUCED BY H. J. Christians
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE
 5 LICENSURE AND REGULATION OF RESPIRATORY CARE PRACTITIONERS;
 6 CREATING A BOARD OF RESPIRATORY CARE; PROVIDING FOR THE
 7 AUTHORITY OF THE BOARD; AND PROVIDING EFFECTIVE DATES."

8
 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Short title. [This act] may be cited as the
 11 "Respiratory Care Practice Act".

12 Section 2. Purpose. (1) The legislature recognizes the
 13 practice of respiratory care to be a dynamic and changing
 14 art and science, the practice of which is continually
 15 evolving to include new ideas and more sophisticated
 16 techniques in patient care.

17 (2) It is the intent of the legislature in the
 18 Respiratory Care Practice Act to provide clear legal
 19 authority for functions and procedures that have common
 20 acceptance and usage and to recognize the existence of
 21 overlapping functions among physicians, registered nurses,
 22 physical therapists, respiratory care practitioners, and
 23 other licensed health care personnel.

24 (3) The practice of respiratory care in Montana
 25 affects the public health, safety, and welfare and is to be

1 subject to regulation and control in the public interest to
 2 protect the public from the unauthorized or unqualified
 3 practice of respiratory care and from unprofessional conduct
 4 by persons licensed to practice respiratory care.

5 Section 3. Definitions. As used in [this act], unless
 6 the context requires otherwise, the following definitions
 7 apply:

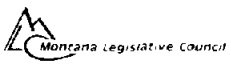
8 (1) "Board" means the Montana board of respiratory
 9 care provided for in [section 20].

10 (2) "Department" means the department of commerce
 11 provided for in Title 2, chapter 15, part 18.

12 (3) "Medical director" means a physician who is a
 13 member of a health care facility's active medical staff and
 14 who is knowledgeable in respiratory care.

15 (4) "Respiratory care" means a health care profession,
 16 under medical direction, employing therapy, management,
 17 rehabilitation, diagnostic evaluation, and care of patients
 18 with deficiencies and abnormalities that affect the
 19 pulmonary system and associated aspects of cardiopulmonary
 20 and other system functions and includes all of the
 21 following:

- 22 (a) respiratory therapy and inhalation therapy;
- 23 (b) pulmonary care services that are of comfort, are
- 24 safe, aseptic, preventive, and restorative to the patient;
- 25 (c) respiratory care services, including but not



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1 limited to the administration of pharmacological,
2 diagnostic, and therapeutic agents related to respiratory
3 care procedures necessary to implement a treatment, disease
4 prevention, or pulmonary rehabilitative or diagnostic
5 regimen prescribed by a licensed physician; and

6 (d) observation, monitoring, and documentation of
7 signs and symptoms, general behavior, and general physical
8 response to respiratory care treatment and diagnostic
9 testing, including the determination of whether such signs,
10 symptoms, reactions, behavior, or general response exhibit
11 abnormal characteristics.

12 (5) "Respiratory care practitioner" means a person who
13 is licensed to practice respiratory care, respiratory
14 therapy, or inhalation therapy in the state of Montana.

15 (6) "Respiratory therapy training program" means a
16 program accredited or recognized by the American medical
17 association's committee on allied health education and
18 accreditation, in collaboration with the joint review
19 committee for respiratory therapy education.

20 Section 4. Exemptions. (1) [This act] does not limit
21 or regulate the practice, services, or activities of a
22 person licensed in this state to engage in the profession or
23 occupation for which he is licensed. Nothing in [this act]
24 is intended to limit or interfere with the practice of
25 qualified cardiopulmonary technology.

1 (2) [This act] does not prohibit:

2 (a) self-care by a patient or the gratuitous care by a
3 friend or member of the family who does not represent or
4 hold himself out to be a respiratory care practitioner under
5 [this act]; or

6 (b) respiratory care services in case of an emergency.

7 Section 5. Restrictions on scope of practice. The
8 practice of respiratory care may be performed in hospitals
9 and other settings, including but not limited to home health
10 care, a physician's office, and a respiratory care
11 practitioner's office, when the respiratory care is provided
12 in accordance with the prescription and direction of a
13 physician. However, respiratory care may be provided without
14 a physician's direction or prescription during
15 transportation of a patient and under any circumstances that
16 necessitate emergency respiratory care. The respiratory care
17 practitioner may transcribe and implement a physician's
18 written or verbal orders pertaining to performance of
19 respiratory care.

20 Section 6. License required. No person may represent
21 himself to be a respiratory care practitioner or perform
22 respiratory care without licensure granted under [this act],
23 except as otherwise provided in [this act].

24 Section 7. Organization and procedures of board. The
25 board shall:

1 (1) elect annually a president, vice president, and
2 secretary-treasurer from its membership;

3 (2) hold regular meetings each year and hold special
4 meetings at times and places as a majority of the board
5 designates. A majority of the board constitutes a quorum.

6 (3) adopt a seal by which the board shall authenticate
7 its documents.

8 Section 8. Compensation of board. The members of the
9 board are entitled to receive compensation and expenses as
10 provided in 37-1-133.

11 Section 9. Powers and duties of board. (1) The board
12 shall license applicants as provided under the provisions of
13 [this act]. In examining applicants, the board may recognize
14 the entry level examination written by the national board
15 for respiratory care, inc.

16 (2) The board shall:

17 (a) administer, coordinate, and enforce the provisions
18 of [this act]; and

19 (b) adopt rules necessary to carry out the provisions
20 of [this act].

21 (3) The board may:

22 (a) develop and implement rules for continuing
23 education and assurance of competency;

24 (b) make recommendations to the governor and the
25 legislature regarding beneficial new and revised programs

1 and legislation relating to respiratory care;

2 (c) collect and review data and statistics with
3 respect to respiratory care, treatment, services, or
4 facilities for the purposes of granting, suspending, or
5 revoking respiratory care licensure;

6 (d) issue, suspend, or revoke licenses to practice
7 respiratory care as provided in [this act]; and

8 (e) bring a civil action in any district court to
9 enforce any of the provisions of [this act].

10 Section 10. Application for licensure. (1) A person
11 who desires to be licensed under [this act] shall apply to
12 the department in writing on a form provided by the
13 department. The application must be signed by the applicant
14 and must contain a statement under oath of the facts
15 entitling the applicant either to receive licensure without
16 examination or to take an examination.

17 (2) The application must be accompanied by a fee
18 established by the board by rule.

19 Section 11. Examination -- scope. (1) The department
20 shall, subject to 37-1-101, examine an applicant for
21 licensure under [this act] at a time and place determined by
22 the board. The examinations shall embrace subjects the
23 board considers necessary to determine the applicant's
24 fitness. The board may use the entry level examination
25 written by the national board for respiratory care, inc., or

1 such other examinations as it prescribes.

2 (2) Except as provided in [this act], no person may be
3 licensed under [this act] without first successfully passing
4 the entry level examination given by the national board for
5 respiratory care, inc., or another entry level examination
6 approved or given by the board.

7 Section 12. License -- renewal -- title. (1) The
8 department shall license each applicant who proves to the
9 satisfaction of the board his qualifications for a license
10 under [this act]. Licenses must be renewed annually on a
11 date set by the department.

12 (2) The license issued by the board must describe the
13 practitioner as a "respiratory care practitioner licensed by
14 the Montana board of respiratory care".

15 (3) A person holding a license as a respiratory care
16 practitioner issued by the department may use the title
17 "respiratory care practitioner" or the letters "RCP". No
18 other person may be so designated or may use the term
19 "respiratory care practitioner" or the letters "RCP".

20 Section 13. Student practitioner. (1) A student
21 enrolled in a respiratory therapy training program who is
22 employed in a health facility may render respiratory care
23 under the direct supervision of a licensed respiratory care
24 practitioner or a physician.

25 (2) During the period of any clinical practice,

1 respiratory care services may be rendered by a student
2 enrolled in an approved respiratory therapy training program
3 when these services are required by the course of study.

4 (3) A person enrolled in an approved respiratory
5 therapy training program as a student shall be identified as
6 a "student respiratory care practitioner" as authorized by
7 the board in its rules.

8 Section 14. Temporary permit. (1) For a period of time
9 to be determined by the board, a person eligible for
10 licensure may be issued a temporary permit to render
11 respiratory care services under direct and immediate
12 supervision of a licensed respiratory care practitioner or
13 physician in the state of Montana.

14 (2) If a temporary permittee does not qualify for and
15 receive a license under [this act] within a time set by the
16 board, the temporary permit obtained under this section may
17 be revoked.

18 Section 15. Applicants licensed in other states. A
19 person may apply for licensure based upon licensure or
20 certification in another state. The requirement to pass an
21 examination does not apply to an applicant under this
22 section who, at the time of his application, has passed to
23 the satisfaction of the board an examination in another
24 state, district, or territory of the United States that is
25 equivalent to the standards set by the board.

1 Section 16. Fees. (1) The board shall establish a
2 schedule of fees for examination, licensure, and annual
3 renewal of licenses for respiratory care practitioners in
4 accordance with 37-1-134.

5 (2) The fees collected by the department under [this
6 act] must be deposited in the state special revenue fund for
7 the use of the board, subject to 37-1-101(6).

8 Section 17. Suspension, revocation, and reinstatement
9 of licenses. (1) The board, after a hearing, may suspend,
10 revoke, impose probationary conditions upon, or
11 conditionally issue any license or permit issued under [this
12 act] for any of the following causes:

13 (a) fraud in the procurement of any license under
14 [this act];

15 (b) knowingly employing an unlicensed person who
16 presents himself as a licensed respiratory care
17 practitioner;

18 (c) conviction of a crime that substantially relates
19 to the qualifications, functions, or duties of a respiratory
20 care practitioner. The record of conviction or a certified
21 copy thereof is conclusive evidence of the conviction.

22 (d) impersonating or acting as a proxy for an
23 applicant in any examination given under [this act];

24 (e) negligence in the practice as a respiratory care
25 practitioner;

1 (f) conviction of a violation of any of the provisions
2 of [this act] or violating or attempting to violate,
3 directly or indirectly, or assisting in or abetting the
4 violation of, or conspiring to violate any provision of
5 [this act];

6 (g) aiding or abetting any person to violate the
7 provisions of [this act] or any rules adopted under [this
8 act];

9 (h) aiding or abetting any person to engage in the
10 unlawful practice of respiratory care; or

11 (i) committing any fraudulent, dishonest, or corrupt
12 act that is substantially related to the qualifications,
13 functions, or duties of respiratory care practitioner.

14 (2) One year from the date of revocation of a license
15 under [this act], application may be made to the board for
16 reinstatement, restoration, or modification of probation.
17 The board may, in its discretion, accept or reject an
18 application and may require an examination for such
19 reinstatement, restoration, or modification of probation
20 when it is considered appropriate.

21 Section 18. Board of respiratory care. (1) There is a
22 board of respiratory care.

23 (2) The board consists of five members appointed by
24 the governor. The members are:

25 (a) three respiratory care practitioners. At least

1 one member must be a respiratory therapist who has passed
 2 the registry examination for respiratory therapists
 3 administered by the national board for respiratory care,
 4 inc., and at least one member must be a respiratory therapy
 5 technician who has passed the entry level examination for
 6 respiratory therapy technicians administered by the national
 7 board for respiratory care, inc.

8 (b) one physician licensed in Montana who is a
 9 recognized authority on pulmonary diseases; and

10 (c) one member of the public who is a consumer of
 11 respiratory care services.

12 (3) Appointment is for 4-year terms, with no person
 13 eligible to serve more than two full consecutive terms.

14 (4) Members specified in subsections (2)(a) and (2)(b)
 15 must be residents of this state who have engaged in the
 16 active practice of their professions for at least 2 years.

17 (5) The board is allocated to the department of
 18 commerce for administrative purposes only as provided in
 19 2-15-121.

20 (6) The board is designated a quasi-judicial board.
 21 Members are appointed, serve, and are subject to removal as
 22 provided in 2-15-124.

23 Section 19. Grandfather provisions. (1) An individual
 24 qualified by the national board for respiratory care, inc.,
 25 as a certified respiratory therapy technician or a

1 registered respiratory therapist on [the effective date of
 2 this act] and who meets the other requirements of the board
 3 may apply for and be issued a license to practice
 4 respiratory care in the state of Montana.

5 (2) A person performing as a respiratory care
 6 practitioner in Montana on [the effective date of this act]
 7 who has no credentials from the national board for
 8 respiratory care, inc., but can provide acceptable
 9 documentation from his medical director to the board may
 10 apply for and be issued a license to practice respiratory
 11 care at any time within 1 year following [the effective date
 12 of this act] if such person has at least 1 year or full-time
 13 equivalent of documented experience in respiratory care at
 14 the time of the application, in the state of Montana. Any
 15 person licensed under this subsection shall, within 4 years
 16 of the date of licensure, meet board requirements for
 17 licensure, including satisfactory completion of the
 18 board-approved examination. Failure to meet such
 19 requirements constitutes grounds for suspension or
 20 revocation of licensure under the provisions of [section
 21 17].

22 Section 20. Initial board appointments. (1)
 23 Notwithstanding the provisions of [section 20(3)], the
 24 governor shall appoint the initial board as follows:

25 (a) one member must be appointed for a term of 1 year;

1 (b) one member must be appointed for a term of 2
2 years;

3 (c) one member must be appointed for a term of 3
4 years; and

5 (d) two members must be appointed for terms of 4
6 years.

7 (2) Initial board members shall serve through the last
8 calendar day of the year in which they are appointed before
9 commencing the terms prescribed by this section.

10 Section 21. Codification instruction. (1) Sections 1
11 through 17 are intended to be codified as an integral part
12 of Title 37, and the provisions of Title 37, chapter 1,
13 apply to sections 1 through 17.

14 (2) Section 18 is intended to be codified as an
15 integral part of Title 2, chapter 15, part 18, and the
16 provisions of Title 2, chapter 15, part 18, apply to section
17 18.

18 Section 22. Severability. If a part of this act is
19 invalid, all valid parts that are severable from the invalid
20 part remain in effect. If a part of this act is invalid in
21 one or more of its applications, the part remains in effect
22 in all valid applications that are severable from the
23 invalid applications.

24 Section 23. Effective dates. (1) Sections 7 through 9,
25 18, 20, 21, and this section are effective on passage and

1 approval.

2 (2) Sections 1 through 6, 10 through 17, 19, and 22
3 are effective January 1, 1986.

-End-

FISCAL NOTE

In compliance with a written request received February 4 19 85, there is hereby submitted a Fiscal Note for S.B. 286 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA). Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

The bill creates a Board of Respiratory Care Practitioners, provides for licensure and regulation of respiratory care practitioners, and gives rule making authority to the board and provides an effective date.

ASSUMPTIONS:

1. Assume approximately 250 licensees, and 10 new applicants per year.
2. Assume a 5 member board that meets 4 times a year = 20 meeting days.
3. Assume fees commensurate with costs.
4. Assume indirect costs of \$200 per year to Department of Commerce.
5. Assume 23 pages of APA rules and notices at \$14 a page.
6. Assume 20 hours of legal costs at \$40 an hour.
7. .25 FTE (Grade 11, step 2) plus 18½% benefits is required to provide board assistance.
8. Assume an automated licensing system costing \$400 for startup in FY86, and \$200 for maintenance in FY87.
9. Assume filing equipment need of \$250 in FY86, and prorated cost of automated typing equipment of \$2000 in FY87.
10. Assume licenses to be renewed annually.

FISCAL IMPACT:

		<u>FY86</u>	<u>FY87</u>
State Special Revenue			
Expenditures:	Current	-0-	-0-
	Proposed	\$13,238	\$15,938
	Difference	\$13,238	\$15,938
State Special Revenue			
Revenues:	Current	-0-	-0-
	Proposed	\$14,000	\$16,000
	Difference	\$14,000	\$16,000

David L. Hunter

BUDGET DIRECTOR
Office of Budget and Program Planning

Date: Feb 8, 1985

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