**MINUTES**

**MONTANA SENATE**
**59th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY**

**Call to Order:** By **CHAIRMAN BRENT R. CROMLEY,** on March 30, 2005 at 4:45 P.M., in Room 350 Capitol.

**ROLL CALL**

**Members Present:**
Sen. Brent R. Cromley, Chairman (D)
Sen. John Cobb (R)
Sen. John Esp (R)
Sen. Duane Grimes (R)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Dan Weinberg (D)
Sen. Carol Williams (D)

**Members Excused:** Sen. Trudi Schmidt (D)

**Members Absent:** None.

**Staff Present:** David Niss, Legislative Branch
Rita Tenneson, Committee Secretary

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

**Committee Business Summary:**
Hearing & Date Posted: HB 169, 3/23/2005; HB 60, 3/23/2005
Executive Action: HB 169; HB 60

## HEARING ON HB 169

**Opening Statement by Sponsor**:

**REP. DAVE MCALPIN (D), HD 94**, opened the hearing on **HB 169**, Revise statutes related to tobacco master settlement agreement.

**REP. MCALPIN** told the Committee the bill tightens up the $25 million payment received every year from the tobacco master settlement agreement and closes minor loopholes. It includes the roll your own tobacco, which was missed last time. It allows the Attorney General's Office, Department of Justice, to capture the cost that may occur for enforcement. It tightens the reporting requirements for wholesalers of tobacco products and manufacturers.

**Proponents' Testimony**:

**Chris Tweeten, Chief Civil Counsel, Office of the Attorney General**, thanked **REP. MCALPIN** for bringing the bill forward on behalf of the Department of Justice. He gave the Committee a beige-colored fact sheet explaining what the bill does and the white sheet, a document from Legislative Services. This summarizes the money which has come in from the tobacco settlement since 1998, when the payments first started.

**EXHIBIT(phs67a01)**
**EXHIBIT(phs67a02)**

**Mr. Tweeten** explained they have brought in an excess of $180 million, counting the money they will be bringing in during 2005. Distribution is explained in the document. Some of the money has gone into a trust fund. Since this fund was created, it has earned over $8 million in interest. The trust is extended for public health and tobacco prevention purposes. When they entered the MSA (Montana Settlement Agreement), they took an obligation of enforcement against those tobacco companies that did not sign the master settlement agreement. There were requirements they pay money into escrow, to create a fund, against which states could proceed, in the event they decided to sue non-participating manufacturers for the same claims brought against the big three. At that time, there were also several dozen small companies manufacturing and selling cigarettes. Many of them joined in the cigarette agreement. Some did not. The companies that decided not to partake in the agreement are what are referred to as non-participating manufacturers (NPMs). In 1999, the Legislature passed a statute requiring NPMs to make their business operations as similar as we could to those of the participating manufacturers. The State of Montana agreed to enforce that. The

companies, in the agreement, struck a deal in which they can reduce or eliminate the MSA payment of states that do not diligently enforce their laws with respect to the conduct of the NPMs. This bill makes sure the State can make the best possible case we can, when showing enforcement of the MSA statutes. It closes a loophole in the NPM statute dealing with roll you own tobacco (RYO). The NPM statute, as originally drafted, defined .9 ounces of RYO tobacco constituted a single cigarette. It provided the escrow payments for RYO tobacco be calculated by reference to excise tax stamps. No state, including Montana, affixes excise stamps to packages of RYO tobacco. This bill takes out the reference to excise tax stamps. It allows them to calculate escrow payments for RYO, based on weight, the same basis used for taxing. It also corrects a drafting error in **HB 663**, passed two years ago, regarding fees.

**Tim Smith**, on behalf of the American Cancer Society. Since the master settlement in 1998, Mr. Tweeten has been working with the Cancer Society in all aspects of the settlement and how it is allocated out by the legislature. The bill will maximize the dollars coming in from NPMs. He hoped the Committee would look favorably on the bill.

**Candice Payne**, **American Heart Association**, **Alliance for Healthy Montana**, rose in support of the bill.

**Opponents' Testimony**: None.

**Informational Testimony**:

**Lee Baerlocher**, **Department of Revenue**, available for questions regarding auditing for the Tobacco Master Settlement.

**Questions from Committee Members and Responses**:

**SEN. CROMLEY** asked **Mr. Tweeten** what the amendment at the bottom of page 3 did. **Mr. Tweeten** said the correction was made at the request of Legislative Services Division. Greg Petesch thought there was a problem with the wording.

**Closing by Sponsor**:

**REP. MCALPIN** closed saying, it is only fair since we have enjoyed the benefits of $180 million from the master settlement, that we pass a bill like this, which provides evidence of due diligence, and ensures this income in the future. He asked favorable consideration.

**SEN. CROMLEY** will carry the bill on the Senate floor.

## HEARING ON HB 60

***{Tape: 1; Side: A; Approx. Time Counter: 0 - 16.9}***

**Opening Statement by Sponsor**:

**REP. CHRISTOPHER HARRIS (D), HD 66**, opened the hearing on **HB 60**, Indoor cleanup standards for methamphetamine labs.

**REP. HARRIS** said the problem with meth labs has been occurring more than four years in rental and other properties. People were leaving a big mess. The innocent property owner wanted it cleaned up. There were no standards or places the owner could turn to for help. Washington and Oregon have standards, but Montana doesn't. Potentially productive property remains quarantined. He gave the Committee a handout from an article showing the major public health threat methamphetamine present to inhabitants. This bill establishes, by legislation, a very tough cleanup standard, adopted in Oregon, Washington and several other states. DEQ is allowed, under the bill, to adopt precursors for cleanup, if they feel it a necessary action. They also have authority for contractor certification. Section 5, of the bill requires notification to the subsequent landlord or buyer that the cleanup has been remediated. If this documentation has been submitted to DEQ, and both the owner and DEQ are satisfied that it has been cleaned up, the owner and public officials involved are granted immunity. The bill passed out of the House with a 2/3 vote and has to pass out of the Senate with a 2/3 vote to give government immunity. If it doesn't pass out with a 2/3 vote, the government immunity falls off. The rest of the bill remains intact. When the property has been cleaned up, the county public health officer will be notified and DEQ will notify the clerk & recorder. Notices from the law enforcement agencies often go on the deed. Once the clerk & recorder gets notification of cleanup, that should be removed. Both the original notification, that it had been a meth lab, and the notification that it has been remediated, are in the file.

**EXHIBIT(phs67a03)**

***{Tape: 1; Side: A; Approx. Time Counter: 16.9 - 25.3}***

**Proponents' Testimony**:

**Michael Batista, Administrator, Division of Criminal Investigation, Department of Justice**, supported the bill. They have been going to lab sites, busting labs, removing children from the site, and calling a contractor to remove the chemicals and dispose of them. Now they are left with the problem of

whether a health issue exists. The Drug Enforcement Administration has them sending notification to county clerk & recorder offices if a meth lab has been found at the property. The letter is then assigned to the property deed. Once the notification has occurred to a property owner, the question arises on how to clean the property to make it habitable again. Law enforcement does not have the answers. They work with DEQ and the Department of Health to find answers. There are no health cleanup standards for meth labs nation wide. Once the letter is sent out, it becomes a problem for the property owner to have the letter removed. The bill gives direction on how to solve these problems.

**John Arrigo, Administrator, DEQ Enforcement Division,** gave written testimony in support of the bill.

**EXHIBIT(phs67a04)**

***{Tape: 1; Side: A; Approx. Time Counter: 25.3 - 30}***
***{Tape: 1; Side: B; Approx. Time Counter: 0 - 4.1}***

**Chris Christiaens, Montana Landlords Association,** stated there is no money available for property owners who are victims of the clean-up problems. In the State of Washington, the average meth lab clean up is about $6500. This goes up when larger buildings are involved. A motel operator, in the State of Washington, had spent over a quarter of a million dollars. Their 250-room motel has been shut down because of clandestine labs. Toxins go into air conditioning and heating systems, contaminating the entire facility. The major concern is that, once notification has been placed on the deed, there is a way to have it removed when the property is certified clean.

**Peggy Trent, Montana Association of Realtors,** thanked the sponsor. She appreciated that property owners, through this bill, will have a way to get themselves out of the cycle of having their property stigmatized. This is a way to protect public health and safety.

**Gordon Morris, Director, MACo,** went on record as appreciating the testimony of **Mr. Batista,** who hit on one of the problems regarding property owners and real estate stigmatized by having been used as a meth lab. More than the public is harmed. There is also the innocent property owner, who may be left with property that cannot be rented or sold, because of the letter attached to the deed. Counties have been struggling with this for over four years. There are properties that have been cleaned, but cannot be certified that they are suitable for re-occupancy. He asked the Committee to amend the legislation

effective upon passage and approval. He said it is a critical issue. The sooner it gets on the books as a law and DEQ works on it, the better off we are.

**Linda Stoll, Montana's Local Public Health Officers and Local Public Health Officers Group**, said it is among the top two pieces of important legislation they wanted passed this year. Attorney General Mike McGrath's previous testimony said 15% of the meth consumed in Montana, is created here in hotel rooms, rental units and houses across the State. She gave information, from the web, regarding cleaning up hazardous chemicals in meth labs. She learned there was a growing business of people who clean meth labs, and gave out information of a business, in Las Vegas, doing cleanup. She also handed the Committee information from the Texas Workers' Compensation Commission publication on meth lab cleanup.

**EXHIBIT(phs67a05)**
**EXHIBIT(phs67a06)**
**EXHIBIT(phs67a07)**

**Jim Kembel, Montana Association of Chiefs of Police**, rose in support of the legislation.

**Jim Smith, Montana Sheriffs and Peace Officers Association and the Montana Cancer Association**, rose in support. He said the bill is important. It establishes baseline standards of when a place is contaminated, when is it cleaned up and the process for public notice and documentation. He pointed out the bill specifies the decontamination standard, 0.1 micrograms of methamphetamine per 100 square centimeters of surface material, which is about five square inches, was important. He agreed with **Mr. Morris**, the bill should be passed as soon as possible.

**Opponents' Testimony**:

**Al Smith, Montana Trial Lawyers Association**, didn't oppose the main purpose of the bill, meth standards for cleanup and the procedure on how it is done, nor the civil liability. He questioned page 3, line 10, where in bold and cap it says, immunity. This was not in the original bill and he didn't think it was necessary. Section 5, line 23 says, not liable in any action. He said they are fine with this, as long as the subsequent purchaser or tenant has received notice that the property has been remediated. He wanted the people to have notice, up front, so they can make an informed decision whether or not they want to rent or purchase that property. He wants assurance that anyone coming in to rent, or purchase, gets notice the owner has gone through the certification process, got the

contractor, and cleaned up the house. He said page 4, lines 15 through 17 say an owner or agent no longer has any responsibility to disclose this past contamination. He objects to this. He referred to Love Canal and the consequences of that subdivision being built over a chemical dump. He isn't sure we know all the signs at this time.

**Haley Beaudry**, Butte, spoke on behalf of a friend of his who is a landlord in Butte. He is concerned about what happens while the cleanup and inspection is taking place and he is unable to rent his place. While the place is empty, the mortgage continues. Banks, if this happens several times in communities, may find themselves in trouble, as well. The meth blite on society is one of the worst situations we can face. He commended **REP. HARRIS** for trying to fix it but wanted to be careful not to harm people who are caught in the crossfire through no fault of their own.

**Informational Testimony**: None.

**Questions from Committee Members and Responses**:

**SEN. GRIMES** asked **Mr. Christiaens** if he had a method in the bill for the department to issue a finding that there is an acceptable form of disposal. **Mr. Christiaens** said, no, there is not. He believed that some of those things could be addressed in rule making. When there is a clandestine lab and law enforcement comes in, they collect all the precursors, chemicals, and the lab. These are removed and taken to Idaho for disposal. There has been federal money available to the Department of Justice for this. When law enforcement goes in, they take samples to the crime lab. The biggest issue for property owners is not knowing what has been used that they have to clean up. His association has been working, for four years, trying to figure out what they had to clean up. The bill is the first step in addressing this. If the meth lab is in a multi-family dwelling, the owner has to displace all the tenants. Unless there is an explosion, or flare up with the meth lab, your property and casualty carrier will not pay for the expenses. In a twelve-plex, you have eleven other tenants whom you are responsible finding housing for.

***{Tape: 1; Side: B; Approx. Time Counter: 4.1 - 30.9}***

**SEN. GRIMES** asked about the standard on page 2. **REP. HARRIS** answered the purpose of the original standard was to make sure the problems could be addressed right away. DEQ has the expertise if they want to make it more stringent. They have this power in rule making. He assumed DEQ would leave the standard in place. It has been in place in Washington and Oregon for quite

some time and has proven to be an acceptable standard cleanup contractors have adapted to.

**SEN. O'NEIL** asked if an owner could clean up his own property then have a contractor certify it has been cleaned up. **REP. HARRIS** answered if the owner cleans it up and asks for the test showing decontamination has met the test. It wouldn't be a wise approach. Under the bill, it could be accomplished.

**SEN. MOSS** inquired, regarding the Oregon and Washington legislation, if any of those states had addressed **Mr. Smith's** question regarding immunity. **REP. HARRIS** told her, not to his knowledge. He said there needs to be a good incentive to carry out the cleanups, which are relatively expensive. It is important that remediation occurs. Once the cleanup has occurred, there is no requirement in State law that requires every subsequent occupant of the property to be informed of it.

**SEN. CROMLEY** asked **John Regal, DEQ**, what is being cleaned up after the meth labs. **Mr. Regal** answered it includes chemicals that are not considered toxic. The main problem is they are volatile, they evaporate. When they evaporate, they adhere to carpet, walls, and disperse throughout the ventilation system. Over time, the chemicals can continue to be released into the air. It is the removal of these residuals hung up in these areas. The drug task force removes the cans and containers of chemicals which are there. Bulk chemicals are properly disposed of. Residual chemicals are the concern. Some people are quite sensitive to these and there is no defined standard, until **HB 60**, on what is an appropriate clean up level. **SEN. CROMLEY** said it would be difficult to make the bill effective immediately if the department didn't have rules. **Mr. Regal** told him they didn't have rules yet. They would have to write a position description and hire a person before they could start this.

**SEN. GRIMES** asked about how many contractors may get into the cleanup. **Mr. Christiaens** was aware that Kleen King is certified in other states, there is one company from Idaho, and a couple engineering firms, one is in East Helena. He recommended some organizations get together, pay for training, and put their own cleanup programs together.

**SEN. GRIMES** asked **REP. HARRIS** to respond to **Mr. Smith's** comments regarding the immunity amendment. **REP. HARRIS** told him if the immunity were amended out, it wouldn't cause him any heartburn. He said it was there for a reason. They want to provide a major incentive to the owner of the property to go through the process and get the cleanup accomplished soon so subsequent owners, or renters, are not exposed to the health affects.

**SEN. CROMLEY**, referring to page 4, section 7, wanted to know if it was good policy for the Legislature to say we want law enforcement to follow these laws, but we don't care if they do it in a careless manner. **REP. HARRIS** said these immunity provisions occur in other aspects of the law. The reason it is in there is this is a new field for state and local officials to be involved in. There isn't a lot of training on meth lab cleanup. If all the chemicals hadn't been picked up and health officials came in and knocked over a chemical, should we hold them responsible because they were doing their duty. **SEN. CROMLEY** wondered then, would the owner have to pay for it. **REP. HARRIS** answered if the owner negligently rented to a meth lab operator and the official wasn't negligent, yes, the owner should pay for it.

**SEN. CROMLEY** referred back to page 3, saying if he was buying a house that had been used as a meth lab, he would certainly want to know that. On line 12, if the property has been properly remediated, he wouldn't have to tell the young person buying their first house, it had been used as a meth lab. **REP. HARRIS** said, under the bill, that is correct. That is an essential part of the incentive. He wants the owner to clean it up. **SEN. CROMLEY** asked, on a chance the certified contractor missed something inadvertently in the cleanup and certified it, then the house is sold to a young couple, who has no knowledge it has been used as a meth lab, and it turns out something does show up later, would the innocent purchaser have to bear the cost. **REP. HARRIS** told him, in that case, it would be the cleanup contractor who would have the responsibility. Most contractors have liability insurance for this purpose.

***{Tape: 2; Side: A; Approx. Time Counter: 0 - 30}***

**SEN. GRIMES** asked **Mr. Christiaens**, referring to immunity, if an amendment similar to the one on mold would be acceptable. **Mr. Christiaens** told him the notice issue is easiest to work with. It would be similar to mold that has been remediated. If he was going to sell his piece of property, there is a form an owner fills out now that talks about any knowledge of previous mold, or any other hazardous effects. You would mark that as, yes. You would also indicate, in this case, that the property has been cleaned up and certified. You would have a copy of certification. Under the bill, DEQ will send notice to the property owner, as well as to the clerk and recorder, to remove the information from the deed. If it becomes an issue of your sale, you have taken care of that. Under the disclosure requirements for a realtor, that is also required. If the realtor is aware there has been some hazardous activity with the property, under their ethics, they are also required to disclose this to subsequent buyers. By not having these amendments, you

may have property owners where there has not been an explosion or a severe lab and they have knowledge of activity of meth. They will only give notice, get rid of the tenant and never clean it up according to the standards. This is a health safety issue for the tenants. One of the reasons the bill is worded the way it is now, is to insure that property owners will have it cleaned it up properly and certified with a reputable cleanup agency.

**Closing by Sponsor**:

**REP. HARRIS** referred to the concerns from the man from Butte, saying nothing in the bill establishes requirements for quarantining the property. That already exists with county health officials. If the property is determined to be off-limits, this is not caused by this bill. It is caused by existing authority under health law. The law does provide an escape from that. If it has been quarantined, and determined to be a health hazzard because of the meth residue, this bill allows the owner to get out. This is the ticket that the property can return to its normal, useful function. He urged the Committee to look at the balance in terms of what will create the incentive for remediation. That is the most important ingredient.

**SEN. GRIMES** will carry the bill on the Senate floor.

## EXECUTIVE ACTION ON HB 169

***{Tape: 2; Side: B; Approx. Time Counter: 0 - 13.8}***

**Motion**: **SEN. CROMLEY moved that HB 169 BE CONCURRED IN.**

**Discussion**: **SEN. CROMLEY** had carried a similar bill cleaning up enforcement provisions. The major tobacco companies agreed to the settlement. Part of the agreement with the settling companies was that a state had to diligently pursue the non-settling companies. If the a state is not diligently pursuing, they can potentially lose their percentage from the global settlement.

**Motion/Vote**: **Motion carried unanimously. SEN. WEINBERG, SEN. WILLIAMS, SEN. ESP, SEN. COBB, and SEN. SCHMIDT voted aye by proxy.**

***{Tape: 2; Side: B; Approx. Time Counter: 13.8 - 19.8}***

**EXECUTIVE ACTION ON HB 60**

**SEN. CROMLEY** suggested deleting Section 7. He didn't see any reason for that to be there.

**Mr. Niss** said they do not have immunity, but the liability is limited.

**SEN. GRIMES** asked if the Committee agreed to strike section 7, what would **SEN. CROMLEY'S** intentions be on section 5. **SEN. CROMLEY** suggested striking section 5 in its entirety. Along with that, strike on page 4, lines 15 through 17. You have the incentive to clean up the property and, if you don't you should be reliable.

**SEN. GRIMES** suggested, instead of striking section 5, strike section 7. Then, in section 5, struck for purchases. His intention was that the notice requirement would only be rescinded in the case of subsequent renters down the line. Then you could put a period after five or ten years so you wouldn't have to be notifying the next person in perpetuity. If the landlord, who is trying to cover his mortgage, insurance, taxes and has everything on the line, knows there is a legitimate process to turn this around in a timely fashion with some protection to him, this provision is too great to sweep under the rug. He said it would be easy for somebody to ignore the warning signs.

**SEN. CROMLEY** said he was looking more at sales than the landlord. If you rented it to a young couple and didn't clean it up adequately, they move in and a child dies, you have a lawsuit. If you had it remediated up to standard and they moved in, you would have immunity. He didn't think you would have to tell them, in that case, if you rented it to them. He didn't see the rental situation to be as important as the sales situation.

**SEN. GRIMES** replied the question is, does the landlord have to tell someone moving in, when there is not a significant problem, down the line.

**SEN. GRIMES** asked if we leave sub part 2 and take out purchaser in sub part 1 would work.

**SEN. O'NEIL** pointed out that sub part 1 gives incentive to get it cleaned up by a certified cleaner. Until you get it cleaned up, you have to notify everybody that it has been dirty. Once it is cleaned up, you don't have to tell anybody any more.

**SEN. CROMLEY** thought you should have to tell a person. **SEN. O'NEIL** responded, if it's clean, why do you have to tell them.

**SEN. CROMLEY** thought they would want to know the history. He thought you had to have disclosure.

**SEN. MOSS** said the issue was disclosure relating to meth labs and the criminal activity that goes on with them. Regarding the landlords, she said it has a negative connotation on the property. There is more than just the chemical contamination and the cleanup. It has to do with the nature of the meth lab and the activity happening with that house.

***{Tape: 2; Side: B; Approx. Time Counter: 19.8 - 30.6}***

**Motion/Vote: SEN. GRIMES moved that HB 60 BE AMENDED TO STRIKE SECTION 7. Motion carried unanimously by voice vote. SEN. WEINBERG and SEN. ESP voted aye by proxy.**

**Motion: SEN. GRIMES moved that HB 60 BE AMENDED BY STRIKING PARAGRAPH 2 OF SECTION 5.**

**Discussion: SEN. GRIMES** asked **Mr. Niss** the best way to accomplish what the Committee wants in paragraph 1, of section 5.

**SEN. CROMLEY** said to look on page 4, line 17.

**SEN. GRIMES** asked **Mr. Niss** how to make the exception to the notice requirement only apply to the landlord's rental situation, so it would say you would have to provide notification in the case of a purchaser; if it has been properly removed, and the inhabitable property has been remediated to the standard established in section 3, it would not apply to renters. **Mr. Niss** said the only question would be how many down the line.

**SEN. CROMLEY** gave an example of having a place with a meth tenant. You cleaned it up and want to rent it out. As far as you know, it is clean. He didn't think you had to tell the new tenant. **SEN. GRIMES** asked if he would be willing to make it identical to whatever is in the asbestos statute. **SEN. CROMLEY** wasn't sure there was anything in the asbestos law that would work.

**SEN. O'NEIL** commented that sub part 1 of section 5 is the guts of the bill. It says, if you have property used by meth, you have to either get it cleaned up, or notify anybody whom you are selling it to, down the line, that it had been contaminated with meth.

**SEN. GRIMES** suggested we hold further action until **Mr. Niss** could make a draft covering the recommendations outlined in paragraph

l. He will think through the immunity issue and see if they still want it in the bill.

***{Tape: 3; Side: A; Approx. Time Counter: 0 - 21.9}***

**ADJOURNMENT**

Adjournment: 5:40 P.M.

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SEN. BRENT R. CROMLEY, Chairman

_____
RITA TENNESON, Secretary

BC/rt

Additional Exhibits:

**EXHIBIT(phs67aad0.PDF)**