

**FINAL**  
**Signed:**

**MINUTES**

**MONTANA SENATE**  
**56th LEGISLATURE - REGULAR SESSION**

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

**Call to Order:** By **CHAIRMAN AL BISHOP**, on January 18, 1999 at  
3:15 P.M., in Room 410 Capitol.

**ROLL CALL**

**Members Present:**

Sen. Al Bishop, Chairman (R)  
Sen. Fred Thomas, Vice Chairman (R)  
Sen. Sue Bartlett (D)  
Sen. Dale Berry (R)  
Sen. John C. Bohlinger (R)  
Sen. Bob DePratu (R)  
Sen. Dorothy Eck (D)  
Sen. Eve Franklin (D)  
Sen. Duane Grimes (R)  
Sen. Don Hargrove (R)

**Members Excused:** None.

**Members Absent:** Sen. Chris Christiaens

**Staff Present:** Susan Fox, Legislative Branch  
Martha McGee, Committee Secretary

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

**Committee Business Summary:**

Hearing(s) & Date(s) Posted:  
Executive Action: SB 36, SB 101, SB 116

**EXECUTIVE ACTION SB 36**

**CHAIRMAN AL BISHOP** asked **Susan Fox, Legislative Research,**  
**Legislative Council** to explain **AMENDMENTS #SB003603.asf** to  
SB 36.

**Susan Fox** said these are amendments that are a combination of different ideas. These amendments combine the dental hygienists into **SB 36** so they have the same limits of liability, that is basically amendments #1 and #2. Amendment #3 basically strikes almost everything in that section. It just reiterates it. Before the dentist, dental surgeon, or oral surgeons had certain language. Medical practitioners because that definition also includes dentist, dental surgeon, or oral surgeons it was kind of duplication to have to say it twice. So this amendment consolidates it. It still covers dentist, dental surgeons, or oral surgeons and other medical practitioners, as well as dental hygienists. **Susan Fox** read the definition of "a medical practitioner" as stated in item #3 in **EXHIBIT (phs13a01)**.

She continued to explain "clinic" and the current definition of "health care" in **Exhibit #1**.

#### **Questions from the Committee Members and Responses:**

**SEN. ECK** asked if medical practitioner would include nurse practitioners and physician assistants.

**Susan Fox**, responded that she could read that definition too. It means any person licensed by the State of Montana to engage in the practice of medicine, dentistry, osteopathy, podiatry, optometry, or nursing speciality, as described in 37-8-202. So those are advanced practices, registered nurses.

**SEN. GRIMES** questioned amendment #3. He said they would be changing, to some degree the people that a dentist, dental surgeon, or oral surgeon would be protected from. In other words not only can it be deciding health care, within the scope of the license, but it also needs to be someone who is referred by a clinic, which is not in the current subparagraph one, is that correct?

**Susan Fox** answered "correct" and explained the definition of "clinic" is fairly broad. It covers even the Whitefish basement of the church. That was the intent of why they defined it. She was not sure there would be many places it would preclude, as long as it was for the purpose of the delivery of health care.

**SEN. GRIMES** asked if they have done anything with the amendments because they have allowed quite a bit of latitude in what a "clinic" is. He asked what have they done.

**Susan Fox** replied the basic thing is they have extended it to other medical practitioners, other than those who practice

dentistry and dental hygienists, to doctors, osteopathist, nurse specialists, podiatrists, and optometrists.

**SEN. GRIMES** stated they have tightened it up a little bit in that for a physician a medical clinic or medical provider who wants to be protected under liability limits here, they would have to go to the effort. In other words, if somebody just walked off the street, an indigent and wanted free care, their first inclination would be to refer them to a clinic, or have some mechanism set up within their health care center so they could call themselves a clinic under this portion. So we would cause them to take an additional step for providing charitable care.

**Susan Fox** stated, well if in fact, as was pointed out during testimony, most of these people are covered by medical malpractice insurance in their office. Many do provide free care within their medical practice. So many would probably continue to do that anyway. This just helps them when that care is outside that realm of practice.

**SEN. GRIMES** said for the purpose discussing the amendment, he wondered if they could segregate the amendments. They were voting to segregate amendment #1 and amendment #2 out from amendment #3. In addition to that, with the understanding if they voted down amendment #1 and amendment #2, they would have to pull the dental hygienists label out of amendment #3. He asked if anyone else wanted to segregate those amendments, or if he should withdraw the motion if nobody else had a point to make.

**CHAIRMAN BISHOP** asked if any one wanted to speak on this subject, since **SEN. KEENAN** wasn't present.

**SEN. GRIMES** clarified that his purpose was: he doesn't remember the testimony exactly. The dental hygienists said they'd like to be included too. Once you start down the laundry list it seems like there is an infinite number of people you could potentially put on a list like this, not knowing what rationale they have, or why they would or would not be included or if.

He doesn't see dental hygienists as having that big of a liability problem as medical doctors would. He is not sure why they would be included on the list. He feels comfortable with the amendment on paragraph three, but not quite so comfortable with including dental hygienists, because he is not sure he heard the rationale for that, unless somebody else did.

**SEN. ECK** stated that one of the problems that they face in clinics around the state is getting the participation of dentists, and for a lot of purposes, a dental hygienist can do

the examinations and clean the teeth, and provide services. Maybe not complete services, and then could refer to dentists. Where you might have a dentist will occasionally see someone in his office. She thinks there is a rationale for having the dental hygienists included.

**SEN. BARTLETT** said she could see some justification for having dental hygienists included in, but its in amendment #3 that is disturbing to her. Frankly, from having served on Judiciary Committee this is her 4th term, she has developed a great respect for the people who serve on that committee and their knowledge of liability and immunity issues. And frankly, if this amendment is adopted and this goes to the Floor, she thinks it will run into some severe problems with people from the Judiciary Committee about how all encompassing this language is. And it is simply way too broad to be a grant of immunity except for gross negligence or willful or wanton acts. She is fairly comfortable with it, and thinks this language means the bill will be in trouble on the Floor.

**CHAIRMAN BISHOP** said he agrees with **SEN. BARTLETT**.

**SEN. FRANKLIN** said there is a mechanism which she is proposing for the committee. There is a mechanism where they might refer a bill to the Senate Judiciary Committee for further scrutiny.

**SEN. BARTLETT** indicated she thought there would have to be a motion on the Floor to take the bill from Senate Public Health Committee and re-refer it to the Judiciary Committee. The custom is to check with the President and Chairman of both committees to see if it is acceptable. Generally it is done before a hearing is held, but she knows immunity bills have hit the Floor without having gone through the Judiciary Committee. In 1995, she thought they had a hearing in a different committee and the bill was taken from the Floor and re-referred to the Senate Judiciary Committee because of discomfort with the immunity language as it was written.

**CHAIRMAN BISHOP** said if it comes out on the Floor, it is going to get a lot of attention, but it doesn't mean it is going to die there necessarily. You can amend, you can submit a pair of amendments at that time, and see what the body thinks about it. There are only eleven members on the Senate Public Health Committee and they might miss the boat on this bill. It is up to the Committee of, course.

**SEN. THOMAS** said he thought they should eventually adopt these amendments and pass the bill. Then with a motion ask you to review this with the President and the Chair of Judiciary, and

make a decision as to whether it should be re-referred from here to there. They could act on it, be done with it the best they could, and then send it on over to the Senate Judiciary Committee.

**CHAIRMAN BISHOP** commented he thought they should have sent it over to Senate Judiciary Committee anyway.

**Motion:** **SEN. THOMAS** moved that **AMENDMENTS #SB003603.asf** to **SB 36 BE ADOPTED.**

**Vote:** On Voice Vote, the **motion carried** with **Sen. Bartlett** voting "no" -9-1.

**Motion:** **SEN. THOMAS** moved **SB 36 DO PASS AS AMENDED** and **CHAIRMAN BISHOP** ask **PRESIDENT CRIPPEN** to re-refer **SB 36** to the Senate Judiciary Committee.

**Vote:** On Voice Vote, the **motion carried** with **SEN. BARTLETT** voting "no" -9-1.

**EXECUTIVE ACTION ON SB 101**

**Motion:** **SEN. FRANKLIN** moved **AMENDMENTS #SB010101.asf** to **SB 101 BE ADOPTED.**

**SEN. FRANKLIN** explained in detail **AMENDMENTS #SB010101.asf.**

**EXHIBIT (phs13a0**

2)

**Informational Testimony:**

**SEN. FRANKLIN** said for the record, this amendment page 3, line 29 covers that the person, there is two ways that an exposure can happen. You can be exposed if you have an overt exposure incident, blood and body fluids, or it is airborne. There has to be mechanism if a disease entity is airborne, then the individual may not know if they have had an exposure. You have to provide a mechanism by which the emergency services folks can be notified if there is an airborne infectious agent because the exposure route is not blood and body fluids.

If you have an exposure with blood and body fluids you know because there is overt incident that would create an exposure because you have broken universal precautions. Let's say, the standard of the industry is that all health care providers should practice universal precautions. Which means that you are gloved, and don't expose your skin, and you have your skin integrity, to protect yourself from blood and body fluids. But things happen like the fire fighters in particular, talked about being in uncontrolled situations where they are not in as controlled a setting as health care providers. They may inadvertently have an exposure because of circumstances of their response. Or, if an EMS person responds and it could be anyone, it doesn't necessarily have to be an "infected person". If universal precautions are broken, that constitutes an exposure and then they have to file a report. But if the individual, who they transfer has an airborne respiratory illness, they won't know if they have had an "exposure" because it is airborne. They don't have to go through an exposure experience. This why the EMS folks will be notified if there is an airborne exposure, that they would not be aware of. If someone has pneumococcal pneumonia, there would be no way they would necessarily know that a code of transmission has occurred. The same thing with meningitis. It's an airborne transmission. You don't break universal precautions, so there is no clue, no trigger telling you that you might be exposed.

**Questions from the Committee Members and Responses:**

**SEN GRIMES** questioned does the airborne disease that she described fall under the definition of infectious disease.

**SEN. FRANKLIN** stated yes. On page 2, it's communicable pulmonary tuberculosis, meningococcal meningitis.

**SEN. GRIMES** asked those are airborne?

**SEN. FRANKLIN** answered yes absolutely. These are airborne illnesses. You can be exposed and not have any knowledge that you have exposure. And then there is the addition, and any other disease capable of being transmitted through an exposure that has been designated by department rule and that is to allow for other transmission modes that they may not be aware of at this point.

**CHAIRMAN BISHOP** commented there would be no way that they could cover completely.

**SEN. FRANKLIN** said they do tend to know what they are. There isn't an infinite variety, but they do tend to know when they become public health hazards.

**Susan Fox** stated she just wanted to note for the committee that this is the reiteration of the amendment that is proposed. She did check with the people that did propose the amendment and felt that the language still accomplished what they wanted.

**SEN. FRANKLIN** added that **Drew Dawson** did look at this and felt comfortable with it. **Drew Dawson** is an **EMS** person.

**SEN. ECK** stated this refers to diseases that are not only airborne, but are very contagious.

**SEN. FRANKLIN** stated yes they are pretty contagious.

**SEN. ECK** said it wouldn't cover the **EMS** person having to go through a day care center.

**SEN. FRANKLIN** said no. It doesn't cover your basic upper respiratory infection.

**SEN. ECK** ask if it wouldn't cover mumps?

**Vote:** Motion **carried unanimously -10-0.**

**Motion:** **SEN. FRANKLIN** moved that **SB 101 DO PASS AS AMENDED.**

**Discussion:**

**SEN. GRIMES** state he had one comment for the record. It needs to be reiterated from time to time and it goes along with what **SEN. ECK** mentioned and that there could be other care givers who should be notified when there has been an infectious disease and a day care center is a perfect example where there has been a lot of contact bodily fluids and that kind of thing. This is not the bill to do that. It is too big an issue to take up here, but just for the record he wanted to state this Senate Public Health Committee recognizes that there are a lot of care givers out there who could be exposed.

**Vote:** Motion **carried unanimously -10-0.**

**EXECUTIVE ACTION SB 116**

**CHAIRMAN BISHOP** asked **Susan Fox** to explain the amendments to **SB 116.**

**Susan Fox** clarified there were two amendments. The first one was requested by **SEN. BARTLETT**. It was the amendment proposed by the Montana Medical Association. **Susan** passed both amendments out at the same time. The second amendment was one that **SEN. GLASER** didn't speak to in his opening, but he had requested this bill and the amendment at the request of the Department of Public Health and Human Services.

**Susan Fox** explained that the amendment the Medical Association had prepared was requested by **SEN. BARTLETT** was to reiterate that an out-patient center for surgical services may include observation beds. This is on page 7, you will note in the definition above. This language was stricken in subsection 34. They would like to have it reiterated in #35, because we are not calling it a facility any more. The amendment doesn't appear exactly as she proposed, but it does include observation beds.

**Motion:** **SEN. BARTLETT** moved that **AMENDMENTS #SB011602.asf to SB 116 BE ADOPTED.**

**Vote:** Motion carried unanimously.

**EXHIBIT (phs13a03)**

**Motion:** **SEN. THOMAS** moved that **AMENDMENTS #SB011601.asf to SB 116 BE ADOPTED.**

**EXHIBIT (phs13a04)**

**SEN. THOMAS** asked **Susan Fox** to please explain the amendment.

**Susan Fox** stated that the amendment is on page 9, line 29. It is followed by surgical services is defined, in the following subsection so you can look at page 10, line 4, where they tie it to federal regulations. It is intended to narrow the surgical services. Handout submitted by **Denzel Davis, Department of Public Health and Human Services** to explain in more detail.

**EXHIBIT (phs13a05)**

**Vote:** Motion carried unanimously.

**Motion/Vote:** **SEN. ECK** moved that **SB 116 DO PASS AS AMENDED.**  
**Motion carried 10-0.**

*{Tape : 1; Side : A; Approx. Time Counter : 1 - 29}*

**ADJOURNMENT**

Adjournment: 3:45 P.M.

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SEN. AL BISHOP, Chairman

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MARTHA MCGEE, Secretary

AB/MM

**EXHIBIT** (phs13aad)