

MINUTES

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

FREE CONFERENCE COMMITTEE ON SENATE BILL 287

Call to Order: By **CHAIRMAN TRUDI SCHMIDT**, on April 18, 2005 at 10:10 A.M., in Room 102 Capitol.

ROLL CALL

Members Present:

Sen. Trudi Schmidt, Chairwoman (D)
Rep. Alan Olson (R)
Sen. Kim Gillan (D)
Sen. Rick Laible (R)
Rep. John Parker (D)
Rep. Bill Wilson (D)
Rep. John E. Witt (R)

Members Excused: None.

Members Absent: None.

Staff Present: Kathleen Ely, Committee Secretary
Susan Fox, Legislative Branch

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

Committee Business Summary:

Hearing & Date Posted: None.
Executive Action: SB 287

CHAIRWOMAN SCHMIDT opened the Free Conference Committee on SB 287. She wanted the Committee members to discuss their thoughts on the original version of the bill.

SEN. KIM GILLAN, SD 24, BILLINGS, thought that it was important to have the most restricted access. She felt that it was a small price to pay for the opportunity to get a handle on the methamphetamine problem. She was disappointed by the changes proposed by the House.

REP. BILL WILSON, HD 22, GREAT FALLS, agreed with **SEN. GILLAN**. He thought that the drug was insidious and was part of the crime increase in Great Falls. He was on the side of the most restrictive conditions possible for the commodity.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 7.8}

REP. JOHN PARKER, HD 23, GREAT FALLS, favored the more restrictive approach as well. He asserted that the cost to the State government based on meth is so far flung that they cannot be quantified. He discussed the impacts on children and families. He felt that the restriction of pseudoephedrine pills, not the liquid form or the gel caps, is a minor price to pay. He felt that it would save money for the taxpayers and help prevent crimes.

REP. JOHN WITT, HD 28, CARTER, said that he was supportive of the bill, and thought that it was along the right track. He mentioned that he was also in support of the amendment because he was from a rural county. The reason he supported the amendments was that he had found that the gel and the liquid forms are not time-release available and for those in rural areas they would have to drive over great distances to pick up the pill form. He understood that there was a real problem in Cascade County and Great Falls. He thought that it was important that rural communities be able to address the issue and come to a compromise.

{Tape: 1; Side: A; Approx. Time Counter: 7.8 - 11.6}

REP. ALAN OLSON, HD 45, ROUNDUP, agreed with **REP. WITT**. He restated that they represent large rural areas without pharmacies. He stated that if he had his way they would take a different judicial look at the way methamphetamine is handled altogether. He asserted that while he did not want the people to use or make methamphetamines, the medicine is very effective. He claimed that it was hard for him to justify to the people he represents, that they would have to travel all the way to Billings in order to get the pill form of pseudoephedrine. He

thought that the bill went too far but that there were amendments which would correct some of the problems. He asserted that it was a problem that needed to be addressed.

{Tape: 1; Side: A; Approx. Time Counter: 11.6 - 14.2}

SEN. RICK LAIBLE, SD 44, VICTOR, asserted his support for the bill. He stated that the bill was patterned after legislation from Oklahoma which significantly reduced the amount of meth labs that they had to deal with. He recognized that there were many concerns expressed by the rural communities of Montana. He thought there was room for compromise, where the control of methamphetamines would still be possible. He claimed that in areas without pharmacies there is a way to control the pill significantly. He saw room for compromise.

CHAIRWOMAN SCHMIDT commented that in the course of the session she had heard from rural individuals that they would be willing to use alternate forms of the medication in order to comply with the bill. She indicated that she had not had the concern expressed to her by rural individuals, that there would be a problem with accessibility. She felt that it might be an inconvenience but that they would be willing to make sure that meth was not made in their community, and were willing to make it as inaccessible as possible. She felt that by passing the bill they would be making it difficult for the clandestine meth labs to become operational. She did not want to risk losing the whole bill over an issue that could be resolved. She requested that Susan Fox discuss the results of her research into the pharmacy aspect. The newest form of amendments is given as Exhibit 1.

EXHIBIT(frs83sb0287a01)

Susan Fox, Legislative Fiscal Division, provided a spreadsheet from the Board of Pharmacy. She discovered that there were ten counties with no community pharmacies. She noted that some counties had institutional pharmacies, but those are not for retail sale. She indicated that there was only one county over fifty miles to the nearest county seat, the others average around 38 miles.

EXHIBIT(frs83sb0287a02)

{Tape: 1; Side: A; Approx. Time Counter: 14.2 - 21.3}

CHAIRWOMAN SCHMIDT requested that Ms. Fox walk the Committee members through the amendment.

Ms. Fox reported that the first amendment was qualifying that instead of the square footage or stock-keeping units the bill would say retail establishments certified by the Department of Justice, pursuant to Subsection 2. She remarked that Amendment 2 was the new Subsection 2. It said that if there was not a licensed community pharmacy within a county, then a retail establishment might apply to the Department of Justice for certification as an establishment that is allowed to sell the products. She noted that the Department of Justice would be given the authority to establish criteria for the certification of the retail establishments with the intent to limit the available supply of ephedrine and pseudoephedrine to prevent the manufacturing of meth. The last subsection of Section 2 would allow the Department of Justice to certify a retail establishment. She claimed that the remaining amendments clarified that it was only a certified retail establishment that would be allowed to sell the products.

{Tape: 1; Side: A; Approx. Time Counter: 21.3 - 23.3}

Pam Bucy, Attorney with the Attorney General's Office, asserted that there was a formal rulemaking process that all state departments must go through when they do administrative rules. She attested that they would compile an interested persons list, all of whom will be invited to the hearings in order to give their input on how the certification will be done. She claimed that the most critical component of any methamphetamine regulatory law is to make sure there is good recordkeeping for the wholesalers and the retailers. She stated that the focus of what they would do by administrative rule would be to focus on recordkeeping for the retail establishments.

{Tape: 1; Side: A; Approx. Time Counter: 23.3 - 25.8}

SEN. LAIBLE expressed concern over the language. He cited that a retail establishment may apply. He presented the scenario where 20 establishments apply from one county. He wanted to know if in the rulemaking there would be a process where they could limit the amount of retail stores that would be certified distributors.

Ms. Bucy replied that there were ways. She was not sure what the best way would be. However, the drug agents would be sent to look at the establishments and they would be able to develop criteria that would be able to limit the amount of retailers who could carry the medication.

SEN. LAIBLE followed up by saying there was a lot of permissive language in the amendment. He was concerned that in the rural counties the permissive language might be ineffective. He wanted

the language to say "we shall adopt rules" and "we shall certify". He wanted to make sure that in the rulemaking there was not a process that would allow anyone who applies to be certified. He suggested making a limit on the number of retailers in an area, based on population or mileage.

Ms. Bucy asserted that they would do those things in rulemaking. She noted that they had added that the intent was to limit the availability of pseudoephedrine to protect from any type of constitutional challenge. She stressed that the point of establishing criteria would be to limit the sale of pseudoephedrine.

{Tape: 1; Side: A; Approx. Time Counter: 25.8 - 28.9}

SEN. LAIBLE assumed that she would not be uncomfortable if they changed the language under Subsections B and C, of Amendment 2, to "shall adopt rules" and "shall certify".

Ms. Bucy thought that most rulemaking authority has permissive language. She asserted that whether the law says "may" or "shall" they would still do it.

REP. OLSON wondered if the language was changed from "may" to "shall", there would be enough time to adopt rules given the effective date of July 1.

Ms. Bucy responded that they had given the subject a lot of thought and felt that they would be able to get the rules done by July.

REP. WITT suggested that they consider the size of the market. He knew that the amendment eliminated the consideration but he thought that it might be able to help.

Ms. Bucy thought that Ms. Fox was trying to give them flexibility because they were not aware of the size of stores within a few of these communities. She believed that the amount of products and the size of the store were critical.

{Tape: 1; Side: A; Approx. Time Counter: 28.9 - 32.2}

SEN. LAIBLE was concerned with who would be dispensing the products. He cited Line 15, Page 2, where it said a licensed pharmacist, registered technician, or a registered intern as defined in Montana code could dispense the product.

Ms. Bucy commented that the language would not work with the new amendment because there would be some retail stores that would

not have those employees. She agreed that it would help with the pharmacies but that it would not work with the retail stores.

SEN. LAIBLE followed up, saying that the language was not necessary. He asked **REP. WITT** if he was still concerned and wanted to deal with the language.

REP. WITT thought that they were fine, even though there was still a concern. He added that the language on Line 25, Page 2, needed to be cleared up.

CHAIRWOMAN SCHMIDT commented that she was not too concerned about the citizens of the rural communities but the effect it could have to not have rules as strict in these counties as the counties with pharmacies. She believed that the Department of Justice wanted to make the bill effective for all of Montana.

REP. WILSON felt that the Governor's Office was not on board with the amendment. He asked that Eric Stern be allowed to speak.

Eric Stern, Governor's Office, agreed that meth was one of the largest problems in the state. He noted that in the four hearings they held there were no objections, other than those from the drug companies. He discussed the results in Oklahoma due to the passage of a similar statute. He asserted that if the choice was between no bill or the amended bill, the Governor's Office would go with the amended bill. However, he added that he thought that it was a mistake and that they should pass the bill without the amendment.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 6.2}

CHAIRWOMAN SCHMIDT responded to Mr. Stern's comments. She stated that there were no opponents and 14 proponents of the bill when they heard it in committee. She added that the retail lobbyists were in support of the bill after consideration. She asserted that they were comfortable with the bill, knowing that people could still get the liquid and the gel caps. She still believed that they need the toughest law possible, but they also needed to have **REP. WITT** and **REP. OLSON** behind the bill.

SEN. LAIBLE understood the concerns and thoughts presented by **CHAIRWOMAN SCHMIDT** but he did not think that it was a significant issue to allow for those rural counties' needs.

REP. WILSON felt that the amendment was "negotiating with terrorists, terrorists being methamphetamines." However, he conceded that he knew the political realities of not adopting the

amendment. He told the Committee that he would grudgingly support the amendment.

{Tape: 1; Side: B; Approx. Time Counter: 6.2 - 11.7}

REP. WITT appreciated the discussion up to this point. He hoped that they could move the amendment forward.

Motion: **REP. PARKER** moved that SB 287 BE AMENDED WITH SB028705.ASB.

Discussion: **REP. PARKER** added that he could appreciate the perspective of the Governor's Office. He expressed confidence in the Attorney General's Office and their ability to develop a tight, effective rule that would follow the intent of the legislature. He thought that this set of amendments would be the best compromise they would be able to achieve.

SEN. LAIBLE wondered if they could change the language on Paragraphs B and C from "may adopt rules" and "may certify" to "shall adopt rules" and "shall certify".

Motion: **SEN. LAIBLE** moved A CONCEPTUAL AMENDMENT FOR SB 287.

Discussion: **Ms. Fox** informed the Committee that "may" was used in order to give the Department flexibility. If they use the word "shall" then they might have to certify anyone who applies and meets the criteria. She attested that with "may" in the language they could refuse to certify certain retailers.

{Tape: 1; Side: B; Approx. Time Counter: 11.7 - 15.6}

SEN. LAIBLE was concerned that without "may" they might not have a certified establishment in a county.

CHAIRWOMAN SCHMIDT clarified **SEN. LAIBLE'S** conceptual amendment.

SEN. LAIBLE repeated that he would rather have "shall" because then he would know that there is an establishment certified in every county. He expressed that they would have to set up the rules under their rulemaking authority that would govern how many establishments would be certified. He claimed that if the rulemaking authority stated that there would only be one establishment certified then they would be able choose who would be the certified distributor. He thought that this would give the Department the ability to choose those that they feel could best control the pseudoephedrine products.

Ms. Bucy would prefer to have "shall adopt rules" under B but leave it "may certify" under Subsection C. This way they would be able to establish the criteria but leave flexibility to choose establishments.

{Tape: 1; Side: B; Approx. Time Counter: 15.6 - 19.4}

REP. WITT understood where Ms. Bucy was coming from. He did not think that it was necessary, however. He thought that by adding "shall" into Subsection C it would make it more realistic that they would do it.

REP. OLSON asserted that there would not be a large number of establishments in the rural areas that could sell these products. He did not think that there would be large numbers of establishments available. He wanted to see "shall certify" in the amendment.

SEN. GILLAN expressed that her problem with "shall" in Subsection C was that the door to disputes would be opened. She felt that the intention was to have a location in every county and that by adding "shall" there could be unintended consequences. She felt that they were not at a point where they could have a bill that could fit every possible permutation. She wanted to see the amendment remain with "may".

{Tape: 1; Side: B; Approx. Time Counter: 19.4 - 23.9}

REP. PARKER called to question on the amendment. He requested that **SEN. LAIBLE** propose another amendment.

Substitute Motion/Vote: **SEN. LAIBLE** moved a CONCEPTUAL AMENDMENT TO AMENDMENT SB028705.ASB AND PLACE "SHALL ADOPT RULES" IN SUBSECTION B AND KEEP "MAY CERTIFY" IN SUBSECTION C. HE MOVED THE AMENDMENT AS AMENDED. Motion carried unanimously, 7-0 by voice vote.

SEN. LAIBLE asked if they needed to put in language regarding a registered intern, licensed pharmacists, or registered technician.

Jim Smith, Representing Montana Pharmacy Association, noted that if an individual is not an intern, a technician, or a pharmacist they should not be behind the counter. He felt that ineligible people are being kept from behind the counter. He asserted that the rules will be followed much more stringently than in the past. He remarked that if a place does not have a pharmacy then they will not have those individuals there and in places with

pharmacies only those authorized individuals will have access behind the counter.

REP. LAIBLE felt comfortable that the current laws were being enforced and administered.

Motion/Vote: SEN. GILLAN moved THAT THE CONFERENCE COMMITTEE REPORT DO PASS AS AMENDED. Motion carried unanimously by voice vote.

{Tape: 1; Side: B; Approx. Time Counter: 23.9 - 29.4}

ADJOURNMENT

Adjournment: 11:00 A.M.

SEN. TRUDI SCHMIDT, Chairman

KIMA ROSLING, TRANSCRIBING SECRETARY

TS/kr

Additional Exhibits:

EXHIBIT ([frs83sb0287aad0.PDF](#))