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## EXECUTIVE SUMMARY

- Montana is the fourth largest state in the U.S. (147,138 sq. miles), with a population of 902,195. Smoking use is 21.2% among adults and 23% among high school students. In 1999, the health cost of smoking related illness in Montana was \$216 million and the total number of smoking related deaths was 1,434.
- When the Montana Clean Indoor Act of 1979 was proposed, the tobacco industry coordinated state ally groups to weaken the mandatory smoke-free section law into a signage law that only required the posting of signs to indicate optional non-smoking areas.
- Though Montana did not have an organized tobacco control advocacy movement in the 1980s, the tobacco industry formed alliances with state organizations to oppose possible tobacco control legislation.
- In 1990, the first organized tobacco control effort was made with a state cigarette tax increase initiative (from 18 cents to 43 cents), which was defeated by a sophisticated tobacco industry campaign (costing over \$1 million) using local ally groups and front groups whom claimed to be concerned citizens and business owners.
- The tobacco industry spends a significant amount of money in Montana on campaign contributions and lobbying expenditures to influence the behavior of political candidates. \$98,043 was spent by the tobacco industry and its allies on political campaigns from 1999-2002.
- A strong relationship between legislative behavior, tobacco industry contributions, and political affiliations exists in Montana. Increased tobacco industry contributions are associated with an increase in pro-tobacco industry behavior, and Republicans legislators are more favorable to pro-tobacco industry positions than Democrats.
- When proposals to divert the Master Settlement Agreement (MSA) funds to non-health related programs were made in 1999, tobacco control advocates directly lobbied the legislature to allocate money to health programs. As a result, much of the MSA money went into the state's general fund for other government programs.
- After getting a minimal amount of the MSA money allocated for health programs in 1999, health advocates used a statewide ballot initiative (CA-35) to get 40% of the MSA money into a health care trust fund. The statewide ballot initiative would become a powerful strategy for tobacco control advocates.
- Montana's Tobacco Use Prevention Program (MTUPP) was launched in March 2000 as a pilot program. However, Governor Judy Martz (2001-2004), who had financial and political ties to the tobacco industry, severely cut the state tobacco use prevention program in 2003 to its lowest funding level, and eliminated the media activities of MTUPP.

- In November 2002, tobacco control advocates again passed a successful statewide initiative (I-146) to get 32% of the MSA money for tobacco use prevention. However, state legislators in 2003 diverted 65% of the tobacco prevention program money to other health programs until 2006.
- Legislators in 2003 passed a cigarette tax increase from 18 cents to 70 cents to raise revenue during the state's budget deficit. Health advocates followed the 2003 cigarette tax increase with another successful ballot initiative (I-146) in November 2004, increasing the cigarette tax to \$1.70 per pack.
- Communities in Montana started passing smoke-free ordinances in 1999, which would be opposed by the tobacco industry through ally and front groups that spread the myth that smoke-free laws would hurt the hospitality industry. These claims became the main argument against smoke-free ordinances.
- The tobacco industry lobbied through the Montana Tavern Association (MTA) and the gambling industry to support state preemption in House Bill 758, which quickly achieved passage despite complaints of legislative procedural violations. However, health advocates successfully defeated HB 758 with a lawsuit in December 2004 when the Montana Supreme Court held that it was invalid.
- In January 2005, with the support of Governor Brian Schweitzer, tobacco control advocates successfully lobbied to increase the MSA allocation for tobacco use prevention to \$6.8 million per year in the 2006-2007 biennium.
- Health groups negotiated with the MTA to create a statewide clean-indoor-air act. Conflict between the health groups arose over the resulting weakened compromise bill. Some health groups nevertheless moved forward with the MTA, and The Montana Clean Indoor Air Act passed in April 2005.
- In September 2005, after tobacco control advocates discovered that MTA lobbyist Mark Staples had influenced the development of the new law's educational materials, new management for the tobacco use prevention program was brought in, and tobacco control advocates believed that undue influence would cease.
- DPHHS failed to finalize implementation rules or launch an educational campaign before the law went into effect in October 2005. Unless the DPHHS promptly addressed these problems, they risked having a law that did not receive strong acceptance, and which would be vulnerable to further tobacco industry efforts to weaken the law.

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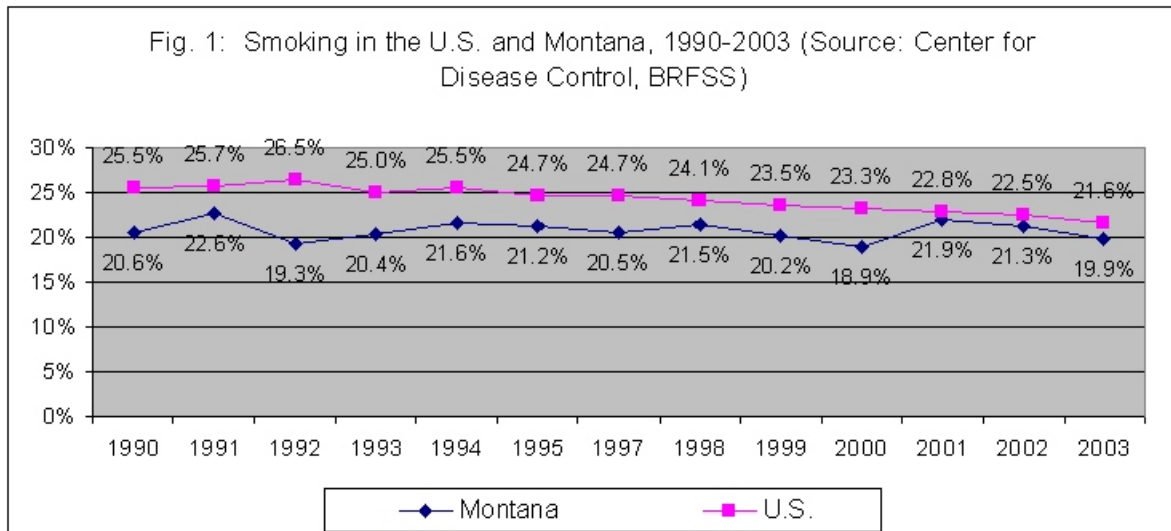
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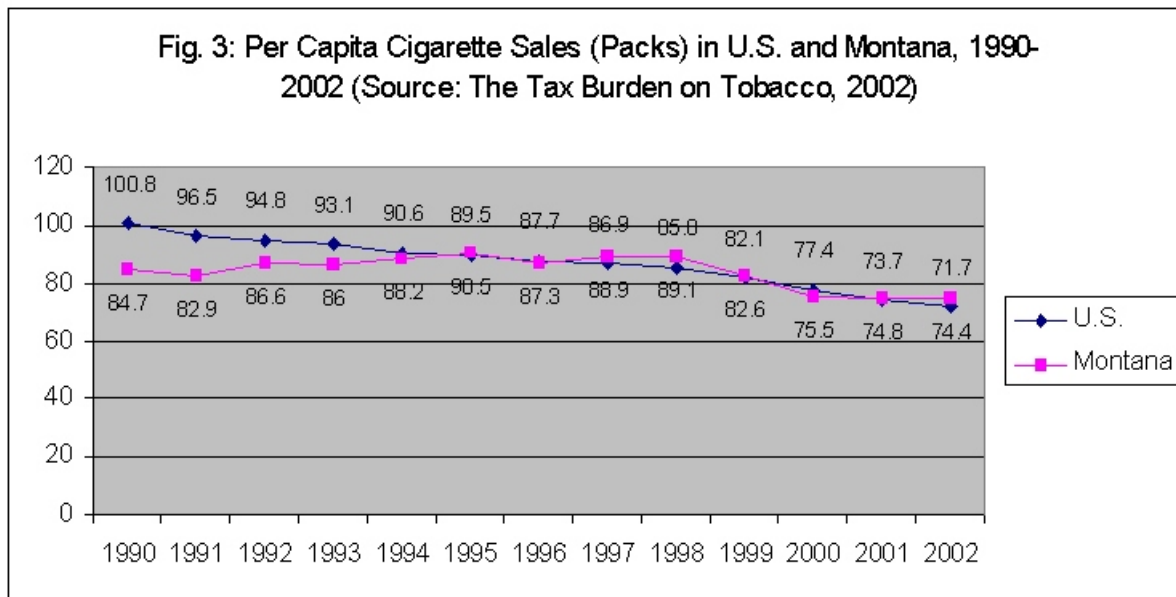
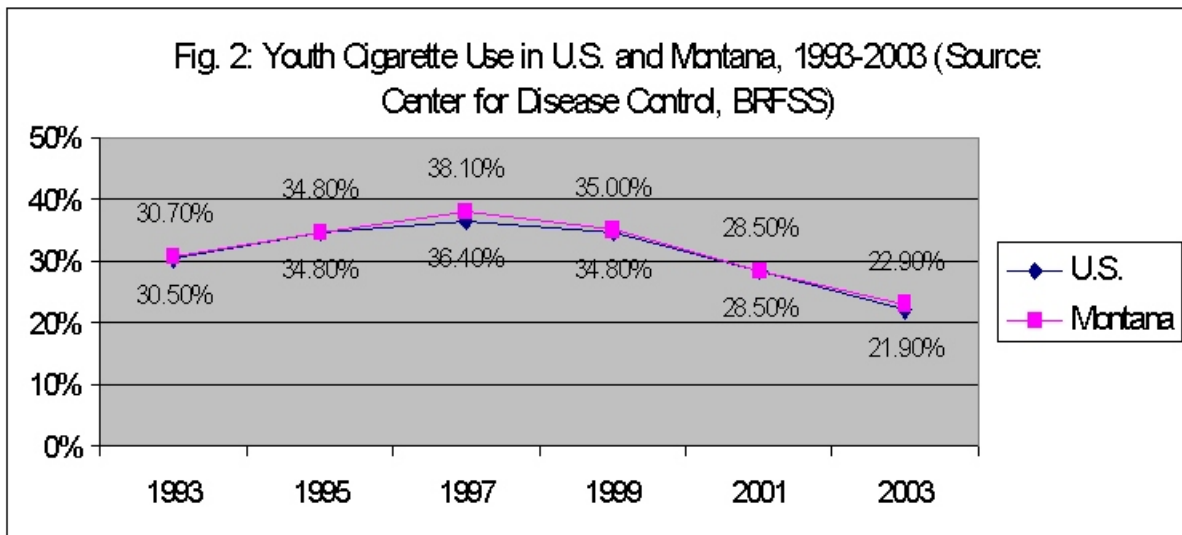
## INTRODUCTION

The mountainous state of Montana, located in the northwestern part of the United States on the border with Canada, is the country's fourth largest state (147,138 sq. miles), and its population of 902,195 is one of the lowest in the country.<sup>1</sup> The population in Montana is homogenous, with Whites accounting for 90.6% of the population. Montana's largest minority group are the American Indians, which make up 6.2% of the population.<sup>1</sup>

Among adults in Montana, the rate of smoking is slightly lower than the national rate (Fig. 1).<sup>2</sup> 19.9% of Montanans smoked cigarettes in 2003 and 6% of all adults used spit tobacco in 2000. Among youth in Montana (grades 9-12), the level of tobacco use is similar to the national rate (Fig. 2)<sup>3</sup>, and has decreased since 1997 from 38% to 22.9% in 2003. The use of spit tobacco among youth has also decreased from 18% in 1999 to 13% in 2003.<sup>2,4</sup> The per capita sales of cigarettes (packs) in Montana is similar to the national per capita sales of cigarettes (packs)(Fig. 3).<sup>5</sup>



Both the human loss and financial cost of smoking in Montana are high. 1,434 Montanans (858 men and 576 women) died prematurely from smoking related diseases in 1999, and an average of four Montanans die of smoking related diseases in one day.<sup>4</sup> In 1999, the average of loss of years for each smoking related death was 12.7 years, a total of 18,000 years. The leading causes of smoking attributed death in Montana are lung cancer, chronic lung disease, and heart disease. The Medicaid costs alone in Montana for smoking related illnesses (excluding prescription costs) are estimated at more than \$12 million per year. The total direct health care costs, both public and private, for smoking related illness in Montana were \$216 million in 1999 (\$246 for each person in the state).<sup>4</sup>



Tobacco control advocacy in Montana in 2005 is led by a strong coalition of health groups (American Lung Association, American Heart Association, and American Cancer Society) and individual tobacco control advocates. However, this was not always the case. Up until the late 1990's there were rarely any organized efforts to push tobacco control policies forward. The first organized tobacco control effort on the state level came in 1990, when a group of health professionals made a failed attempt against a much more organized and well financed tobacco industry to pass a state initiative for a cigarette tax increase. Starting in 1999, local communities began passing smoke-free ordinances and, despite sophisticated opposition coordinated by the tobacco industry, succeeded in increasing local protection against second-hand smoke.

With the introduction of the Master Settlement Agreement (MSA) settlement payments in 1999 and the creation of the Montana Tobacco Use Prevention Program, tobacco control efforts in Montana became much more organized, though they still lacked the political power held by the tobacco industry and its allies in the state. Health and tobacco control advocates in 1999 were unable to prevent most of the MSA money from being diverted by legislators to the state's general fund, which was then dispersed to non-health related programs. Furthermore, the state's tobacco use prevention program (MTUPP) did not have the political support needed to defend itself against an extremely pro-tobacco industry governor, Judy Martz (2001-2005), who severely cut the state's tobacco use prevention resources.

Since 1999, health groups and tobacco control advocates have developed strategies, such as ballot initiatives, that won them more public support and political power. By 2005, tobacco control advocates had more influence than ever before. Even with this new level of political influence, however, tobacco control advocates in 2005 still find themselves fighting the tobacco industry and its ally groups, which have themselves evolved into using strategies of seemingly reasonable compromise in order to advance pro-tobacco industry policies. In particular, the tobacco industry ally group, the Montana Tavern Association (MTA) (a trade organization formed in 1937), negotiated with health groups to pass a compromised Montana Clean Indoor Air Act of 2005, which permanently preempted local smoke-free ordinances, and allowed for bar and casino exemptions for at least four years. Thus, by negotiating with state health groups, the MTA successfully eliminated stronger local ordinances and, being one of the parties that created the bill, gained the power to influence the implementation and interpretation of the 2005 clean-indoor air law.

## **EARLY HISTORY OF TOBACCO CONTROL IN MONTANA**

### *National Tobacco Control Policy in the 1970s*

The Montana Clean Indoor Act of 1979, introduced as House Bill 235, came at a time when such laws were relatively novel. In 1973, Arizona passed a limited clean indoor air law that established designated smoking areas in most public places.<sup>6</sup> In 1975, Minnesota passed the first comprehensive clean indoor air act of its kind in the United States, prohibiting smoking in all public places with the exception of designated smoking sections.<sup>7</sup> While designated smoking section laws seem modest in 2005, it was a big step at the time, and the Minnesota law became model legislation for future states. Although smoking section laws had also been passed in other states around this time, none were as comprehensive or effective as the Minnesota act. North Dakota passed a law in 1975 authorizing the creation of smoking and nonsmoking sections,<sup>8</sup> and Nebraska passed a law in 1974 that made locations nonsmoking unless specifically designated a smoking area (though this law had little practical effect because of the failure to require "no smoking" signs and the widespread acceptance of smoking).<sup>9</sup>

As early as 1973, the tobacco industry recognized that the public's knowledge about the dangers of smoking was increasing, and that smoking was starting to lose its status as a socially accepted habit.<sup>10</sup> A review of the status of smoking and health issues found in an incomplete internal document from the Brown and Williamson tobacco company dated March 15, 1975 made several observations that were not favorable for the tobacco industry.<sup>10, 11</sup> Among the topics

discussed in the review were the Surgeon's General Report (published in 1972) which made progress in "closing off scientific debate on the smoking and health issue," the vast number of U.S. doctors who were advising their patients about the dangers of smoking, and the growing belief that secondhand smoke was harmful to one's health.<sup>12</sup> The review also stated that

[m]ore and more, smoking is being pictured as socially unacceptable. The goal seems to be the involvement of others - non-smokers, children, etc. - in addition to health and government organizations. The main thrust of these zealots seems to be that "smoking is not a personal right because it hurts others; that smoking harms non-smoking adults, children, and even the yet unborn."<sup>11</sup>

By 1978, the tobacco industry saw that the growing tobacco control movement was a real danger to them.<sup>10</sup> "A Study of Public Attitudes Toward Cigarette Smoking And the Tobacco Industry In 1978," prepared by the Roper Organization for the Tobacco Institute in May 1978, explained:

The original [1972] Surgeon General's report, followed by the first "hazard" warning on cigarette packages, the subsequent "danger" warning on packages, the removal of cigarette advertising from television and the inclusion of the danger warning in cigarette advertising were all "blows" of sorts for the tobacco industry. They were, however, blows that the cigarette industry could successfully weather because they were all directed against the smoker himself. While the overwhelming majority of the public has been convinced by the anti-smoking forces that smoking is dangerous to the smoker's health, this has not persuaded very many smokers to give up smoking.

The anti-smoking forces' latest tack, however – on this passive smoking issue – is another matter. What the smoker does to himself may be his business, but what the smoker does to the non-smoker is quite a different matter. The anti-smoking forces have not yet convinced anything like as many people that smoking harms the health of the non-smoker as they have convinced people that smoking harms the smoker. But this study shows that they are well on the way to making the same sale about the effects of smoking on the non-smoker as they have already made with respect to the effects on the smoker.

This we see as the most dangerous development to the viability of the tobacco industry that has yet occurred... As the anti-smoking forces succeed in their efforts to convince non-smokers that their health is at stake too, the pressure for segregated facilities will change from a ripple to a tide as we see it.<sup>12</sup>

### ***Montana Clean Indoor Act of 1979***

The first tobacco control legislation in Montana was passed in 1979, when two bills proposed in the House of Representatives attempted to require designated smoking sections: House Bill 304 and House Bill 235. House Bill 304, which was tabled by the House Committee on Human Services (and thereby killed) was introduced by Rep. Joe Kanduch (D-Deerlodge), and would have prohibited smoking in restaurants unless signs were posted that designated smoking areas. The penalty for repeated violations under HB 304 was the cancellation of a restaurant's license (though the number of violations resulting in penalty was not stated in the bill).<sup>13</sup> House Bill 235, which was passed in amended form, was introduced by Rep. Robert Ellerd (R-Gallatin). As originally written, HB 235 would have required the designation of nonsmoking areas in enclosed public places, with a \$50 fine for violations, though the bill was eventually softened to only facilitate the optional creation of smoke-free sections<sup>14</sup>

When the two bills came before the House Committee on Human Services for a hearing on February 7, 1979, testimony was presented simultaneously because of “similar intent on both bills” and “for time factors involved.”<sup>15</sup> Rep. Kanduch, in presenting HB 304 at the hearing, stated that the intent of the “smoking section bill” was to create areas for people to smoke “without infringing upon a non-smoker’s rights to breath clean air.”<sup>15</sup> The bulk of the testimony, however, addressed House Bill 235. Several doctors and concerned citizens spoke as HB 235 proponents, citing health concerns and the high cost of treating smoking related illnesses. Among the groups represented in the proponents testimony were the Montana Lung Association, the Montana Medical Association, the Montana Nurses Association, and the Montana Society of Respiratory Therapists.<sup>15</sup>

Testimony in opposition to HB 235 came from individual restaurant and tavern owners, as well as from the Cascade Tavern Association and from Tom Maddox, who represented the Montana Association of Tobacco and Candy Distributors. Maddox argued to the committee that the issues was a waste of time and money, that it had not been adequately proven that smoking or second-hand smoke caused cancer, that smoking laws were unpopular, and that the law would be unenforceable.<sup>15</sup>

The tobacco industry was well prepared for the committee hearing on HB 304 and HB 235, shown by an information bulletin distributed by the Montana Association of Tobacco and Candy Distributors, dated January 23, 1979,<sup>16</sup> and a February 2, 1979 letter titled “Grass Roots Activities - Montana,” written by the Manager for State Public Affairs at R.J. Reynolds Tobacco Co, Larry Bewley. Together, the documents show that the Association of Tobacco and Candy Distributors, R.J. Reynolds Tobacco Co., and the Tobacco Institute coordinated their efforts against the two bills, with the effort being managed by Tom Maddox, Executive Director of the Montana Association of Tobacco and Candy Distributors, who was also the lobbyist for the Tobacco Institute.<sup>17-19</sup>

The Montana Association for Tobacco and Candy Distributors informational bulletin reprints the proposed HB 304, and asks Montana wholesalers “will you and your people please telephone or call on your restaurant customers; advise all of this bill and HB 235? Ask all to write to their representatives and ask each to vote DO NOT PASS on both bills.” The bulletin further instructs to write “all members of the House Committee on Human Services.”<sup>16</sup>

The R.J. Reynolds State Public Affairs letter, “Grass Roots Activities,” was distributed to several RJR employees, including Vice President Charles A. Tucker and Assistant General Counsel Peter Ramm.<sup>17, 19</sup> The memorandum discussed the upcoming February 7, 1979 hearing on the two bills and listed the members of the House Committee holding the public hearing. The memorandum further indicated that Tom Maddox was the Tobacco Institute lobbyist in Montana and would handle the opponents phase of the hearing. The memo advised that “RJR people attending the hearing should locate Tom just prior to the hearing. Our people will not testify, but follow Tom’s instructions.”<sup>17, 19</sup> Thus, R.J. Reynolds would have a presence at the hearings without committee members knowing their affiliations.

The “Grass Roots Activities - Montana” letter advised that opponents should call their representatives and indicate opposition to House Bill 304, and provided a phone number for them

to call, as well as reasons they should give in opposing HB 304.<sup>17</sup> This follows standard tobacco industry strategy used in several other states, including California,<sup>10</sup> Minnesota,<sup>7</sup> Mississippi<sup>20</sup> Nebraska,<sup>9</sup> and Texas.<sup>21</sup> The reasons for opposition given in the memo were:

- 1) anti-smoking laws such as these would be too costly to enforce;
- 2) laws would mean more governmental control;
- 3) We shouldn't regulate with law that which can be handled with common courtesy; and
- 4) Unenforceable.

The memo went on to emphasize that "it is very important that you personally talk to your legislator or his office and be sure he/she gets the message."<sup>17</sup>

House Bill 304 was defeated with little argument. According to the minutes from the House Committee on Human Services hearing from Feb. 7, 1979, no testimony from either proponents or opponents of the bill were heard.<sup>15</sup> On February 9, 1979, Republican committee member G.C. Feda (Glasgow) moved to table HB 304, and the House committee unanimously carried the motion.

House Bill 235, on the other hand, did achieve passage, but in a weakened form. HB 235 was initially defeated by a 7 to 10 vote in the House Human Services Committee on Feb. 9, 1979, but was amended and re-introduced by the bill's sponsor, Rep. Robert Ellerd, and committee chair Polly Holmes (D-Billings), thereby becoming known as substitute HB 235. On Feb. 12, 1979, the committee again voted against HB 235 in a 7 to 10 vote, but the sponsors were able to get 10 signatures from the House membership to overturn the committee on Feb. 14, 1979. Substitute HB 235 was approved by the House in a 78 to 22 vote on Feb. 19, 1979, and the bill was then moved to a hearing before the Senate.<sup>16, 22</sup>

Substitute HB 235 was heard by the Senate Public Health, Welfare and Safety Committee on March 5, 1979, where the bill's sponsor, Rep. Ellerd, introduced proposed amendments that were presumably made to increase the bill's chances of passing, since the bill had already been defeated in the initial committee hearing.<sup>15</sup> Instead of prohibiting smoking in certain areas, the bill would require that no smoking signs be posted in certain areas (Table 1). None of the proponents of the bill at the March 5<sup>th</sup> hearing objected to these amendments. In fact, Rep. Holmes gave some further argument in favor of the amendments, saying that the change was made so that enforcement would be focused on sign compliance, instead of on the individual smoker.<sup>15</sup> Holmes further stated that if substitute HB 235 were not passed, proponents would put a stricter version of the bill on a ballot for voter approval.

Testimony was heard from many of the individuals and organizations that had spoken on the bill in the House Committee hearing. Among the witnesses in favor of HB 235 were several representative from various health organizations: the Montana Society for Respiratory Therapy, the Department of Health and Environmental Sciences, the Lewis and Clark County Health Department, the Montana Nurses' Association, and the Montana Lung Association.<sup>15</sup>

Although HB 235 had been considerably weakened, the tobacco industry and its ally groups continued to fight against it, worried that its passage would be a first step for an even

stronger bill.<sup>23</sup> Opponents testifying at the Senate Committee hearing were individuals from the hospitality industry, the Montana Innkeeper’s Association, and Tom Maddox, who was again representing the Montana Tobacco and Candy Distributors Association. Maddox submitted a five page prepared statement to the senate committee, reiterating the arguments that HB 235 was unnecessary, unenforceable, and unpopular. Maddox also contended that the goal of reducing the harm caused by second-hand smoke could be better achieved through the use of “clean air devices,” otherwise known as ventilation devices, and claimed that such devices “clean the air amazingly in short time,”<sup>15</sup> a common tobacco industry argument which has been proven to be untrue.<sup>24</sup>

<b>Table 1: Language from House Bill 235 as Originally Proposed and As Amended.</b>	
<b>Language from House Bill 235 as originally proposed.</b>	<b>Substitute House Bill 235 as amended (March 5, 1979).</b>
<p><b>Nonsmoking area to be designated in enclosed public places:</b> The proprietor or manager of a public place shall post a sign or signs designating an adequate portion of the enclosed public place as a nonsmoking area.</p> <p><b>Elevators:</b> All passenger elevators shall be designated as nonsmoking areas.</p> <p><b>Smoking is prohibited in certain areas:</b> Smoking is prohibited in elevators, museums, galleries, kitchens, and libraries of any establishment doing business with the general public.</p> <p><b>Exemptions:</b> Except for working areas in enclosed public places the following shall be exempt for this act: (a) restrooms; (b) taverns or bars where meals are not served; (c) vehicles seating six or fewer members of the public.</p>	<p><b>Designation or reservation of smoking or nonsmoking areas – notice:</b> The proprietor or manager of an enclosed public place shall:</p> <p>(a) designate nonsmoking areas with easily readable signs;</p> <p>(b) reserve a part of the public place for nonsmokers and post easily readable signs designating a smoking area;</p> <p>(c) designate the entire area as a smoking area by posting a sign that is clearly visible to the public stating this designation</p> <p><b>No smoking signs in certain places:</b> No smoking signs must be conspicuously posted in intrastate buses that are not chartered, elevators, museums, galleries, kitchens, and libraries of any establishment doing business with the general public.</p> <p><b>Exemptions:</b> The following shall be exempt for this act: (a) restrooms; (b) taverns or bars where meals are not served; (c) vehicles or rooms seating six or fewer members of the public.</p>

On March 9, 1979, the senate committee voted 4-2 to advance the bill to the full senate, and on March 15, 1979, the Montana Senate approved HB 235 by a vote of 34-16.<sup>22</sup> In its final form, substitute HB 235 was essentially a signage law, requiring the proprietor or manager of a public place to post a sign at all public entrances stating whether or not there were areas within the establishment reserved for non-smokers. Substitute HB 235 also segregated smoking areas in public health care facilities, but contained no penalty provisions. Most significantly, substitute HB 235 allowed for an entire establishment to be declared a smoking area.<sup>15</sup>

A Tobacco Institute Legislative Bulletin dated March 16, 1979 from Washington D.C. discussed the passage of HB 235, and described it as an “already weakened substitute,” and that

lobbying against it “was like lobbying against courtesy,” since it contained no penalties and no enforcement procedure.<sup>22</sup> Courtesy, or the notion that individual discretion would be enough to keep smokers from exposing others to second-hand smoke, was an alternative to legislation often given by the tobacco industry and its allies. The Legislative Bulletin further shows that the industry was attempting to attack the bill through more direct contact with government officials, though believed it’s chances were slim: “We are meeting with Governor Thomas L. Judge to explore the possibility of a veto, but this action appears remote at this time.”<sup>22</sup>

### ***House Bill 794 Adds Penalty Provision to the Clean Indoor Air Act***

Despite the beginnings of a larger tobacco control movement occurring nationwide, the tobacco industry had little to be concerned about with regards to the Montana Clean Indoor Act. There would be little change to the act in the subsequent decades, with the exception of HB 794, also sponsored Rep. Ellerd, which amended the Montana Clean Indoor Act in 1981 to provide for a criminal penalty of \$25.<sup>25</sup>

At the HB 794 hearing before the House Human Service Committee on Feb. 20, 1981, State Department of Health and Environmental Services (DHES) representatives explained that many owners of public establishments had refused to post signs, causing enforcement problems which the DHES believed solvable by the proposed bill.<sup>26</sup> Other proponents testifying at the February hearing were representatives from of the Montana Lung Association and the Montana Medical Association. Of the three people testifying in opposition to HB 794 at the House Committee hearing, two were representing the Montana Tavern Association: Lobbyist Don W. Larson and Bob Durkee, both of whom would again testify against the bill at the subsequent Senate Public Health Committee meeting, where it would be heard after HB 794 passed in the House in a 53 to 41 vote on February 25, 1981.<sup>26</sup>

At the March 18, 1981 Senate Public Health Committee hearing on HB 794, supporting testimony again came from the DHES, as well as the Lewis and Clark County Health Department and the Montana Medical Association.<sup>27</sup> Testimony in opposition to the bill was heard from the two representatives of the Montana Tavern Association (MTA) who spoke at the House Committee hearing (Larson and Durkee), as well as from Tom Maddox, executive director of the MATCD and a Tobacco Institute lobbyist.<sup>17</sup> Maddox stated that his organization opposed the bill because there was already substantial compliance with the law throughout the state, and that HB 794 would trigger thousands of dollars in litigation. However, the Senate showed agreement with the recommendation from the Department of Health, and voted in favor of HB 794 on March 31, 1981. It was then signed by the Governor on April 15, 1981.<sup>27</sup>

### ***1983 Cigarette Tax Increase***

In 1983, Gov. Ted Schwinder (D) proposed House Bill 511, introduced and sponsored in the House by Rep. Francis Bardanoue (D-Harlem) on January 26, 1983, to increase the cigarette tax from 12 cents to 15 cents a pack,<sup>28</sup> “in order to finance long-range building bonds.”<sup>29</sup> HB 511 would raise approximately \$4 million per year.<sup>30</sup> The main motivation behind the proposed bill was the need to raise funding for long-range government building programs, as opposed to a desire to curb the state’s smoking rate. Indeed, no health organizations, health advocates, or



public health officials testified at the House Taxation Committee hearing on March 3, 1983 regarding HB 511.<sup>30</sup> Proponents of the bill who did testify were representatives of the Office of Budget and Programming, Women Involved in Farm Economics, the Montana Pilots Association, the Associated Students of Montana State University, the Associated Students of the University of Montana, and the Montana Arts Advocacy organization. Each of these groups would be benefitted from building programs that were to be funded by the HB 511 cigarette tax.<sup>30</sup>

In contrast to the absence of health advocates and lack of public health arguments in the HB 511 debate, the tobacco industry and its allies had a strong presence in both the House committee hearings and in the public arena. The tobacco industry again used its strategy of encouraging supporters to contact legislators in order to spread its message and create the impression that it had wide public support,<sup>28</sup> this time utilizing the Tobacco Action Network (TAN).

As explained in a Philip Morris 1978 manual for employee participation in TAN, “TAN is an umbrella organization formed by the member companies of the Tobacco Institute (TI). Its purpose is to bring together and coordinate all segments of the tobacco family - growers, manufacturers, wholesalers, retailers, and vendors - as well as our allies.”<sup>31</sup> In the second edition of the TAN manual, Philip Morris explained that the purpose of TAN was to “oppose the enactment of restrictive laws and the imposition of punitive taxation.”<sup>32</sup> The second edition of the manual also detailed the organization’s structure:

TAN is headed by a national director in Washington, D.C. The national director works closely with a TAN Corporate Coordinators Committee made up of senior executives from each of the major participating cigarette manufacturers.

TAN is also organized on the state level in many states. Each TAN organization is headed up by a state director... The State TAN Director works closely with a State TAN Advisory Committee made up of representatives from each segment of the tobacco industry in the state or area, including representatives from the participating cigarette manufacturers and the Tobacco Institute legislative counsel for that state.<sup>32</sup>

A March 15, 1983 “Action TAN Request”<sup>28</sup> from Jack Kelly, Vice President of the Tobacco Institute,<sup>33</sup> was sent to a list of tobacco executives and employees which included W.E. Ainsworth (Senior Vice President of Government Relations for R.J. Reynolds<sup>34</sup>), James R. Cherry (a member of the State Activities Policy Committee for the Tobacco Institute<sup>35</sup>), Stanley S. Scott (Vice President of Public Affairs for Philip Morris<sup>36</sup>), and J. Kendrick Wells (a corporate attorney for Brown and Williamson<sup>37</sup>). This “Action TAN Request” discussed a hearing before the House Taxation Committee, stating “[w]e initially were optimistic that H.B. 511 could be controlled in the House Taxation Committee...” but noted that the states projected budget deficit of approximately \$60 million made the passage of the bill much more likely.<sup>28</sup>

The request went on to lay out a plan for creating the appearance of public support through TAN by mobilizing locals against the proposed cigarette tax, which was identical to the tactics TAN used to oppose the 1983 6-cent North Dakota cigarette tax increase,<sup>8</sup> and which is a common tobacco industry strategy used to oppose local tobacco control laws.(cite “The Politics

of Local Tobacco Control”).<sup>42</sup> The “Action TAN Request” stated:

Your permission is requested for the Area Director to contact TAN members... in Montana to encourage them to:

1. Call and/or write letters to all members of the House Taxation Committee.
2. Call and/or write letters to their respective State Representatives...
3. Call and/or write letters to all members of the Senate Taxation Committee...
4. Call and/or write letters to their respective State Senators...

TAN members will be sent a list of suggested points to make in opposition to this measure...<sup>28</sup>

At the March 3, 1983 House Taxation Committee hearing, testimony in opposition to HB 511 came from tavern and liquor sales associations (originally, the bill included an increased excise tax on liquor, but that portion was removed by amendment in the House, and the additional cigarette tax was increased from the initially proposed 15 cents to 16 cents per pack).<sup>38</sup> Among the opponents were the Silver Bow Tavern Association, three individuals representing the Montana Tavern Association (including Tom Maddox), and Jerome Anderson, the registered lobbyist for the Tobacco Institute<sup>38</sup> who had been a member of the State House of Representatives (1955-1962), and the 1961 Majority Floor Leader in the House.<sup>39</sup> Anderson passed out a prepared document stating four main reasons for opposing the increased cigarette tax: it would interrupt the growth trend of cigarette sales and, thus, decrease a revenue source; it would increase the regressive tax burden on smokers, especially the poor; it would further penalize smokers who pay a disproportionate share of tax; and the livelihood of retailers and wholesalers would be hurt.<sup>38</sup>

Despite the lack of any health proponents at the hearing, the tobacco industry failed to stop the passage of HB 511 in the house, which benefitted from strong support from a Democratic governor leading a Democratic majority in the House, with many legislators believing that the cigarette tax would bring much needed revenue in a time of deficit.<sup>40</sup> On March 22, 1983, HB 511 passed the House by a 60-37 vote, and was referred to the Senate Taxation Committee.

At the hearing before the Senate Taxation Committee on March 23, 1983, the Tobacco Institute again testified against HB 511, represented by two of its registered lobbyists, Jerome Anderson and Otis Tucker.<sup>38</sup> A prepared document was again distributed at the hearing, reiterating many of the same arguments made by TI in the House Committee hearing, with the additional argument that alternative methods to fund the Long Range Building Program existed, thus making the increased cigarette tax unnecessary.<sup>38</sup> Among the other organizations testifying in opposition at the senate hearing were the Montana Candy and Tobacco Distributors Association (represented again by Tom Maddox) and the Montana Taxpayers Association.

As was the case in the House Committee hearing, no health groups or advocates testified at the Senate Hearing for HB 511. Testimony in support of the bill came from groups that wanted funding for the state’s long-range building program which would come from the increased cigarette tax, such as the Montana Arts Advocacy organization, and the Office of Budget and Program Planning.<sup>38</sup> Even without the support of any health minded proponents, HB

511, raising the cigarette tax from 12 cents to 16 cents, passed on April 13, 1983 in the Senate by a 42-6 vote, and was then signed by the Governor, becoming effective on July 1, 1983.<sup>41</sup>

### ***The State of Montana Tobacco Control in the Late 1980s***

Nationally, the grass roots clean indoor air movement was well underway in the late 1980s, and several events had occurred to push the tobacco control issue forward. By 1986, more than 75 ordinances had been enacted in California,<sup>42</sup> and in that same year Raymond Pritchard, chairman of the Board of Brown and Williamson Tobacco, said in the *US Tobacco and Candy Journal*, July 17, 1986: “Our record in defeating state smoking restrictions has been reasonably good. Unfortunately, our record with respect to local measures... have been somewhat less encouraging.”<sup>42, 43</sup> It was also in 1986 that the 19<sup>th</sup> U.S. Surgeon’s General Report, “The Health Consequences of Involuntary Smoking,” concluded that “[i]nvoluntary smoking is a cause of disease, including lung cancer, in healthy nonsmokers,” and warned that, “[o]n the basis of the evidence presented in this Report, it is clear that actions to protect nonsmokers from ETS [environmental tobacco smoke] exposure not only are warranted but are essential to public health.” As described by Roger Monzingo, director of state activities at the Tobacco Institute, in a December 19, 1986 “State Activities’ ETS plan of Action” memorandum to Samuel Chilcote Jr., President of the Tobacco Institute, this report was a “watershed event” for the industry, and the negative press coverage of the secondhand smoke issue was so serious that unless the Institute acted, “there will be no ‘long run’” for the tobacco industry.<sup>44</sup>

In Montana, tobacco industry strategy for the state during the late 1980s was revealed in the “Guideline for Northwest Regional Grass Roots Program,” dated July 10, 1986. The Guideline reveals that one of the tobacco industry’s primary goals in the region was to organize a concerted effort between “local tobacco company executives, legislative counsel(s), distributors, and the Tobacco Institute” to oppose any possible tobacco control legislation.<sup>45</sup> The tobacco industry intended to accomplish this by showing the “national and regional chains” and “local retailer outlets” the “correlation between adverse legislation and public perception, as a result of that legislation,” making the point that it “must be shown as a negative impact on the profits as it relates to the companies, the distributors, (as well as) the sales force. They must be shown that legislation impacts their ability to maintain the level of income they need – that legislation and sales go hand in hand.”<sup>45</sup> The tobacco industry wanted to create an alliance which could be used as a mechanism through which the Tobacco Institute could oppose any tobacco control legislation. The “Guideline for Northwest Regional Grass Roots Program” goes on to explain that:

Once the mechanism has been triggered, each legislator would receive written and oral, and possible physical contacts from a broad based constituent representation, *and it would appear to be spontaneous.*

They would received [sic] these contacts from: the national/regional chain executives, the retail managers, their staff, the distributors, their staff. The sales personal from both distributors and companies. Customers at the retail level could also sign informal petitions that become an effective lobbying tool for the legislative counsel.

...There is absolutely no reason why each and every member of the company and distributors staff should not be given the directive to secure at least five or six letters each from family members,

neighbors and business associates.[emphasis added]<sup>45</sup>

Despite very little activity from health organization and advocates in Montana during the 1980s, the tobacco industry in 1986 was planning sophisticated strategies “[i]n preparation” and “in anticipation” of anti-tobacco legislation by “bringing everyone concerned to a united front,” and by setting up a mechanism that could be triggered by “an action alert sent by TI,” or, “if a crisis arises unexpectedly,” could be put into motion by TI contacting “key individuals by phone...”<sup>45</sup> The tobacco industry’s forward-looking strategies were likely motivated by the national tobacco control movement that was continuing to make progress in the late 1980s. A June 15, 1987 “Special Report” by the state activities division of the Tobacco Institute commented that “[n]ot since 1975 - the year after the first significant Surgeon General’s report attacking smoking - have so many states passed smoking restriction measures. In the wake of the 1986 Surgeon General’s report, 15 states have enacted new restrictions thus far in 1987.”<sup>46</sup>

As late as 1987, the tobacco industry still did not consider health advocacy groups in Montana a serious threat. A “1987 State of the States” report written by the State Activities Division of the Tobacco Institute “assessing the economic and political climate of each of the 50 states as they affect the tobacco industry, and evaluating industry resources for action on legislation projected for 1987,”<sup>47</sup> was written for the apparent purpose of assisting the tobacco industry and its allies in preparing legislative lobbying activities. The report observed: “Montana does not have the traditional anti-tobacco forces at work in the legislature, at least not on the surface. Most anti-tobacco legislation in past years has come from one or two specific legislators with a particular interest in tobacco restriction efforts.”<sup>47</sup> Though the report does say that at least one health group and some advocates had made occasional, if unorganized, appearances regarding tobacco legislation: “On occasion, the local Helena Lung Association does make its presence known to the legislature, and similar groups in Great Falls and Billings have contacted their local legislators.”<sup>47</sup>

The “1987 State of the States” report also gives insight into the tobacco industry’s ally groups up to that time, again showing a strong partnership with the Montana Association of Tobacco and Candy Distributors: “Montana’s wholesaler association (Montana Association of Tobacco and Candy Distributors) has been quite helpful to us in the past... The member company representatives are also willing to involve their account, retailers, etc., in fighting tobacco restriction measures.”<sup>47</sup> The report also noted that Montana’s vendor’s, “although few in number, have been quite helpful to us in the past and would appear to be supportive of our efforts to limit excise tax increases.”<sup>47</sup>

The report observes that other business allies, however, were less involved in opposing tobacco control legislation : “The Montana Retail Association has been moderately helpful to us in the past, as has the Montana Restaurant Association. Both organizations, though, are somewhat ambivalent to tobacco issues, preferring to become directly involved only in those [areas] that appear to affect them directly.”<sup>47</sup> The report went on to state that the Tobacco Institute had “not been particularly successful in recruiting labor [organizations] on any of our tobacco issues...” but that recruiting such groups would be a priority in the future.<sup>47</sup>

### *The 1989 Cigarette Tax Increase*

The lack of activity by health groups and health advocates which was exemplified during the 1983 cigarette tax debate, and which was observed by the Tobacco Institute in 1987, continued in 1989 when Rep. Bob Pavlovich (D-Butte) introduced HB 202 on January 16, 1989, which would increase the cigarette tax by 2 cents, from 16 cents, for a total of 18 cents per pack. The tax estimated to raise \$2.4 million in the biennium.<sup>48</sup> At the a hearing before the House Committee on Taxation on March 16, 1989, Rep. Pavlovich stated that the bill was being proposed to finance the planning and building of nursing homes for veterans, and to provide additional beds for existing veterans' facilities.<sup>48</sup> Proponent testimony centered around the dire need to provide health care for World War II veterans, and the insufficient number of facilities and resources to care for the veteran community. Among those who testified in favor of the bill were representative of the state Veteran's Affairs Department, the American Legion, the United Veterans of Montana, and the American Defenders of Bataan and Corregidor.<sup>48</sup> No public health arguments were made in support of the bill.

Similar to the 1983 cigarette tax hearings, the tobacco industry was well represented. The list of those testifying against HB 202 included the following individuals: Jerome Anderson, (attorney and lobbyist for the Tobacco Institute), Tom Maddox (representing the Montana Association of Tobacco and Candy Distributors), Rex Manuel (representing Phillip Morris), Tom Stump (President of the Montana Association of Tobacco and Candy Distributors), Gene Philips, (representing the Smokeless Tobacco Council), and Roger Tippy (representing R.J. Reynolds).<sup>48</sup> Opposing testimony argued that an increased tax would cause declining sales, and thus reduced revenue, and that the cigarette tax was "selective" and unfair.<sup>48</sup>

The arguments of the tobacco industry did not prevail over the need to fund veterans' facilities, and HB 202 was approved by the House on March 30, 1989 by vote of 65 to 32. When HB 202 was transmitted to the Senate, the same groups testifying at the House hearing also testified at the Senate Taxation Committee hearing on April 7, 1989, and the same arguments were repeated.<sup>49</sup> On April 17, 1989, the Senate approved HB 202 in a 26 to 24 vote, and the bill was signed by the Governor on May 16, 1989.<sup>49</sup>

### **THE 1990 CIGARETTE TAX INCREASE INITIATIVE AND THE OPPOSITION CAMPAIGN BY THE TOBACCO INSTITUTE**

#### *The Health Group Coalition Petition for Initiative 115*

In January 1990, Initiative 115 was filed with the Montana Secretary of State. The proposed initiative would ask voters to increase the tax on cigarettes from 18 cents to 43 cents a pack, and increase the tax on other tobacco product to 25 percent of the wholesale price.<sup>50</sup> The increased tax would raise an estimated \$16.8 million annually, and would be used to create a Tobacco Education and Prevention Health Care Fund within the State Department of Health, with 50% of the revenue going to programs to reduce smoking among people under 21 years of age, 30% going to prenatal and perinatal care programs, 6% towards tobacco-related disease research, and 14% for administration, fire prevention, environmental conservation, and unspecified "damage restoration."<sup>50</sup> Supporters of the initiative estimated that if the initiative

had been successful, the tax would have decreased overall smoking prevalence by 6%, and smoking initiation of teenagers by 15% in the first five years of enactment.<sup>50</sup>

The proposed initiative was modeled after California's successful 1988 cigarette tax initiative, Proposition 99,<sup>50</sup> and was brought by a group of physicians and health-care professionals that formed a ballot issue committee (which are formed to support or oppose a particular ballot issue) called "Health Professional, Consumers, and Concerned Citizens for the Tobacco Tax," (Health Professionals).<sup>51, 52</sup> Dr. Robert M. Shepard, a Montana family physician and one of the leaders of the organization, said the idea for the ballot initiative came from a group in Montana who saw what had happened in California, where the cigarette tax was increased by 25 cents and then spent on tobacco education and use prevention.<sup>53</sup> The health group coalition believed that the same thing could be done in Montana.

The initiative proponents were required to submit at least 18,351 valid signatures from 34 legislative districts by June 29, 1990.<sup>50, 52, 54</sup> Fund raising for the petition drive began in January 1990, but proponents found little financial support from state and local medical and educational organizations. For instance, the Montana Medical Association was not initially supportive (though they would later provide financial support for the initiative campaign) and the Montana Education Association refused to help, nor did any religious organizations provide assistance.<sup>50</sup> However, the petition drive did receive some financial support and several volunteers from the Montana Academy of Family Physicians and Montana Public Health Association, as well as from state and local health organizations and individual supporters. Having little financial resources, the proponents of I-115 had to conduct a volunteer petition drive.<sup>50</sup>

Supporters began circulating the petition in February 1990, but the petition drive was unorganized at first.<sup>50</sup> A "Ballot Issue Update" written by Bob McAdam, Tobacco Institute Vice President of Special Projects, and Stan Bowman, a Tobacco Institute Director, observed that I-115 proponents initially showed "little organized fund raising or signature gathering activities."<sup>55</sup> In the first two months of the petition drive, only 3,000 signatures were obtained.<sup>50</sup> However, in the last five weeks before the June 29, 1990 deadline, volunteers were able to obtain 19,000 names in a "whirlwind" effort.<sup>50</sup> A June 18, 1990 incomplete tobacco industry ballot issue update observed that although I-115 proponents had previously "missed several key opportunities to gather signatures," they eventually took advantage of large public events: "During the Governor's Cup race, they had signature gatherers walking among the crowd of 10,000," and that "on primary day, they were present at several polling places outside of Helena."<sup>54</sup>

On June 29, 1990, I-115 proponents filed their signatures with the various county's across the state, and announced that they had submitted 22,800 signatures.<sup>56</sup> On July 17, 1990, the Secretary of State certified the initiative for the November ballot, but the incredible push for signatures at the end of the drive had left many volunteers burned out and low on energy, which was believed by some observers of the campaign to be a contributing factor in the initiative's ultimate failure.<sup>50</sup>

***Financial Contributions to the Health Groups and to Pro-Tobacco Groups***

In the campaign phase of I-115, the Montana Academy of Family Physicians and the Montana Public Health Association continued to provide financial support, and were joined by the Montana Medical PAC (a Political Action Committee, which support or oppose candidates or issues that the committee members agree upon), the American Cancer Society, the American Heart Association, and the and American Lung Association, whom together contributed most of the funds for the campaign (Table 2). Several smaller professional organizations and individuals made contributions as well, bringing the total contributions to the group to \$39,474.07.<sup>50, 57</sup> (By comparison, the average amount of money raised by a 1992 Montana gubernatorial candidate was \$214,026.13). Because of their limited financial resources, the proponents ran only a small number of newspaper, radio, and television advertisement, did no direct mailings, and conducted only one survey pole (which showed them slightly ahead, at 50% to 45% in August 1990).<sup>50</sup>

Contributions Made to "Health Professionals, Consumers, and Concerned Citizens for the Tobacco Tax"		Contributions Made to "Tobacco Consumers, Distributors & Producers Opposed to Unfair Tobacco Sales Taxes"	
American Cancer Society	\$9,434	American Tobacco Co.	\$66,155
Cardiology Associates	\$150	Brown & Williamson	\$147,962
Family Health Clinic of Helena	\$450	Lorillard Tobacco Co.	\$76,255
Family Physicians	\$1,000	Oregon Executive Committee	\$55,000
Great Falls Pathologist	\$300	Philip Morris	\$611,229
Hawkins-Lindstrom Clinic	\$300	R.J. Reynolds	\$282,931
Healthy Mothers Healthy Babies	\$2,000	Smokeless Tobacco Council	\$27,846
American Heart Association	\$7,500	The Tobacco Institute	\$200,000
American Lung Association	\$2,000		
Public Health Associates	\$1,000		
Silver Bow County Medical Association	\$100		
St. Peter's Hospital	\$100		
Individual Contributions of more than \$75	\$6940		
<b>Total Monetary Contributions</b>	<b>\$39, 474</b>	<b>Total Monetary Contributions</b>	<b>\$1,475,673</b>

The money raised by the supporters of I-115 was dwarfed by the financial resources of the initiative's opponents, who were organized as the ballot issue committee "Tobacco Consumers, Distributors & Producers Opposed to Unfair Tobacco Sales Taxes." The group received financial contributions totaling \$1,475,673. Contributions came from several tobacco companies (American Tobacco Co., Brown and Williamson Tobacco Co., Lorillard Tobacco Co., Phillip Morris, R.J. Reynolds Tobacco Co., and U.S. Tobacco), as well as from the Smokeless Tobacco Council and the Tobacco Institute in Washington D.C. Tobacco related organizations that made only non-monetary, in-kind contributions were the Tobacco and Candy Distributors Association (\$1,688.55) and U.S. Tobacco (\$2,883).<sup>57</sup> According to a series of four Tobacco Institute documents titled "Montana Tax Initiative Allocation of Assessment" starting in December 15, 1989 and ending November 20, 1989, contributions from five of the tobacco companies (Philip Morris, R.J. Reynolds, Brown and Williamson, Lorillard, and American) to the I-115 opposition campaign were allocated based on each companies production of cigarettes in the prior year.<sup>58-61</sup>

The large financial investment made by tobacco companies was publicly known because it was reported in local newspapers - disclosing Tobacco Industry involvement was not a main focus of the campaign proponents. Tobacco Institute lobbyist Jerome Anderson defended the out-of-state contributions as a fair response to the proposed tax initiative: "...if somebody takes after an industry, the industry is going to respond," and added that "we have to get our message across to the public."<sup>51</sup>

***Anti-Tax Sentiment in Montana***

A comprehensive outline of the campaign against the tax initiative was given in a report, "Montana Campaign Against Tobacco Tax Initiative," prepared by the tobacco industry's local campaign manager Ron Richards and Tobacco Institute lobbyist Jerome Anderson, addressed to Stan Bowman, Area Director for the Tobacco Institute.<sup>62</sup> The campaign hired the Sage Advertising Agency, a Montana agency based in Helena that had extensive experience in state campaigns (by 1990, the agency had handled 29 statewide general elections and initiative campaigns and won 25 of them). The March 29, 1990 cover letter from Richards to Bowman explained that the campaign would "exploit the voters' antagonism to more bureaucracy and more taxes," referring to Tobacco Institute survey research that showed a heavy taxpayer resistance in Montana to any new state programs or taxes, which was reinforced by a projected "100-million plus budget shortfall in the next two years"<sup>62, 63</sup> (Table 3).

<b>Table 3: Summary of Survey Research Report for Montana Cigarette Tax Initiative, January 23, 1990<sup>64</sup></b>			
	<b>In Favor of Initiative: 61%</b>	<b>Opposed to Initiative: 35%</b>	<b>Not Sure: 4%</b>
<b>Main Reasons Cited</b>	It might stop people from smoking: 16%  Smoking is unhealthy: 11%  State need money: 11%  Creates increase for programs: 11%  It's a good idea: 11%	Taxes too high: 33%  Tax discriminates: 26%  Will burden smokers like me: 7%  Already too much bureaucracy: percentage not indicated in survey report.	
<b>Strength of Position</b>	Feel Strongly: 60% (37% of total respondents)  Did not feel strongly: 30% (18% of total respondents)	Feel Strongly: 57% (20% total respondents)  Did not feel strongly: 32% (11% of total respondents)	Slightly favor the initiative: 55%  Slightly oppose the initiative: 28%  Undecided: 17%

Collecting survey data is a common industry strategy in opposing state cigarette tax legislation and initiatives. A March 23, 1992 Tobacco Institute memorandum from Robert S. McAdam shows that the Tobacco Institute would also use polls in Massachusetts, Colorado,



Oregon, and Arkansas (states that were described as “threatening [the tobacco industry] with initiatives and referenda”) for several purposes, such as to “establish initial themes that can be used in all of our public comments and to begin to assess the scope and cost of the entire campaign...”; to “determine the themes that can be used both with the earned media responses and to the electorate at large”; and “to determine public sentiment” on the tobacco tax issues.<sup>65</sup> The Montana campaign outline went on to say that the “general negative attitude,” which was determined from the survey, “can be successfully utilized to defeat the tobacco tax increase proposal.”<sup>62</sup>

Opponents took advantage of the significant anti-tax sentiment in Montana by using television, radio, and newspaper advertisements that emphasized the pivotal issues of state taxes and bureaucracy.<sup>50</sup> Brochures were sent to businesses with the message, “Initiative 115 - the 140% per pack cigarette tax increase - can you afford it?” and mailings were sent to voters describing the cigarette tax as “a trap set by ‘special interests’ to subsidize those people who live in cities.”<sup>50</sup> The pro-tax campaign was further hurt by the fact that Initiative 115 would give Montana the highest cigarette tax in the nation, and that there had been significant property tax increases in rural areas right before the election.<sup>50</sup> Opponents took advantage of the newly increased property tax with an ad stating, “although they could not do anything about outrageous property taxes, they could vote against the ‘selective tax increase.’”<sup>50</sup>

Proponents of I-115 learned from California’s Proposition 99 in 1988 that increased funding for programs to reduce smoking among children was popular among voters, and thus focused heavily on the decrease in youth smoking and the funding of health programs that would result from the increased cigarette tax.<sup>50, 51</sup> But this message was overshadowed by the anti-tax attitude that was prevalent in Montana in 1990, and may have even served to strengthen the oppositions anti-tax argument. In discussing the problems with the 1990 initiative, Shepard, one of the main campaign proponents, stated:

They [the committee campaigning for the cigarette tax] created a whole bunch of new programs and people just don’t like the idea of creating new government programs. If they had put the money in the general fund, we could have sold it a lot better than we did. ...it was a bad strategy...the first time because all we got were all these new government programs and more taxes for Montanans. We kept saying that you can avoid this tax, you don’t have to smoke. But my voice was lost in the wind, even though I’m pretty talkative.<sup>53</sup>

### ***Tobacco Industry Attempts to Undermine the Fairness Doctrine***

The tobacco industry campaign outline<sup>62</sup> also shows an attempt by the tobacco industry to bypass “Fair Doctrine” principles in campaign advertising (The Fairness Doctrine was created in 1949 as a result of the US Federal Communications Commission’s decision that licensed stations were obligated to provide a reasonable opportunity to present both sides of a controversial issue, and was created to ensure that all sides of controversial issues would be given access to the airwaves, even if one side could not pay for access<sup>66</sup>). The outline states that “[c]are would be taken in buying certain television stations based on commercial limitations and Fairness Doctrine station policies,” noting that “[t]he large majority of radio stations pay little attention to ‘Fairness Doctrine’ access requests,” and that “[m]ore work has to be done in the area of selling TV stations’ management against running nationally originated anti-cigarette smoking Heart and

Lung Association PSA spots.”<sup>62</sup>

According to Dr. Shepard, tobacco industry representative Jerome Anderson had successfully persuaded Governor Stan Stephens (R) to “stop all of his public service announcements on tobacco, all of the health messages, anything he was going to say about tobacco... in the next nine months until the initiative process was over. Because they didn’t want it to look like maybe the Governor was supporting something.”<sup>53, 67</sup> Dr. Shepard further stated that the tobacco industry had “convinced several TV stations that by putting us on morning talk shows for 5 minutes, they could ‘balance’ the hundreds of thousands of dollars they spent on advertising.”<sup>53, 67</sup>

An August 7, 1990 memorandum written by Bob McAdam included in a “Confidential Ballot Initiative Committee Briefing Book” for the Tobacco Institute shows that the tobacco industry had originally attempted to get even more cooperation from broadcasters in limiting the message of initiative proponents.<sup>56</sup> The memorandum observed that “many broadcasters that have been contacted by our campaign in the state have indicated that they will provide ‘equal time’ to the proponents of the initiative at a rate of 4 or 5 to one,” as a result of a “letter from the FCC clearly stating that the repeal of the fairness doctrine does not necessarily apply to ballot issues” (In 1987, the FCC had decided to cease enforcement of the Fairness Doctrine after concluding it no longer served the public interest, though coverage of an opponent’s position in a reasonable good faith manner was still required for ballot issues<sup>56, 66</sup>). The memorandum further explained that “[w]hile this does not change our interest in getting media outlets to reduce the ratio to the lowest possible number, it does explain [the broadcasters’] hesitancy to abandon fairness doctrine principles as they pertain to ballot issues...”<sup>56</sup>

### ***Tobacco Industry Allies and Front Groups***

The tobacco industry campaign outline emphasizes the need to reach people through already existing organizations: “One of the most important aspects of the grass roots campaign is reaching voters on a personal basis through the organizations to which they belong.”<sup>62</sup> The tobacco industry’s campaign outline also discussed using direct mailing to veterans, opinion leaders, and heads of households, using mailing lists that were provided by “certain tobacco companies.”<sup>62</sup> The strategy was consistent with the tobacco industry’s long held practice of speaking through front groups.<sup>42, 68, 69</sup> The campaign outline follow-up letter from Stan Bowman again gave further explanation of the strategy:

Among the principal target groups are veterans... convenience store operators, households in certain geographic areas where bootlegging could be a major problem and members of the Montana Tavern Association, as well as other support groups that will be enlisted... The direct mail campaign would be specifically tailored for the various targeted interests. Further, it may require more than one mailing in some instances.<sup>63</sup>

The tobacco industry campaign outline furthermore discussed grass roots and coalition organization by recruiting additional groups, and utilizing the outreach of third party organizations, such as the Montana Tavern Association and small convenience stores.<sup>62</sup> Other groups that the campaign outline considered as possible allies who might join in actively opposing a 25 cent tax were listed as follows<sup>62</sup>:

Convenience Store Operators and Employees  
Food Market Operators and Employees  
Gasoline Station Operators and Employees  
Drug Store Operators and Employees  
Vending Machine Operators and Employees  
Cigarette Distributors and Employees  
Tavern Owners Association  
Innkeepers Association  
Montana Food Retailers Association  
Local Chambers of Commerce  
Other Business Federations

A May 15, 1990 Tobacco Institute ballot issue update memorandum written by Bob McAdam and Stan Bowman indicated that progress had been made in recruiting some of these groups as allies: “Excellent progress is being made in Montana, particularly in the area of coalition building. During the past two weeks, expressions of support have been obtained from, most notably, the state’s grocers’s association and several veteran’s groups.”<sup>70</sup> A June 18, 1990 incomplete tobacco industry ballot issue update also stated that “...the campaign is beginning to line up the people necessary for the grassroots elements of the campaign. By identifying allies in various parts of the state, it appears that our effort will have significant local level involvement.”<sup>54</sup>

Observations of support from ally groups were also given in the 1993 Journal of Public Health Policy paper, “The 1990 Montana Initiative to Increase Cigarette Taxes: Lessons for Other State and Localities,”<sup>50</sup> which reported that the “Montana American Legion opposed the measure, fearing its passage would jeopardize tobacco tax funding for the proposed Veteran’s Nursing Home in eastern Montana, and sent letters to all its members urging a ‘no’ vote,” even though the tobacco industry had fought against the 1989 cigarette tax increase to fund the veterans’ facilities in the first place.<sup>48, 50</sup> Also, “[t]he Montana Alliance for Progressive Policy, a liberal group opposing the increase as an unfair tax on poor people, received \$22,500 from a tobacco industry lobby group to produce and send brochures to its 50,000 members urging rejection.”<sup>50</sup>

In addition to recruiting already existing groups as allies in the fight against the cigarette tax initiative, the tobacco industry also directly organized and coordinated at least one group, the Montana’s Smoker’s Caucus. An October 5, 1990 R.J. Reynolds interoffice memorandum to Jim Johnston, CEO of R.J. Reynolds, from Thomas C. Griscom, Executive Vice-President of External Relations for R.J. Reynolds, states that Jean Gowdy, Executive Director of the Montana Smoker’s Caucus, was an RJR smoker’s rights group leader who was recruited by Philip Morris, and that the Smoker’s Caucus’ activities were coordinated by Philip Morris, though this information was never released to the public.<sup>71</sup> According to R.J. Reynolds memorandum:

One of our smokers rights group leaders from Billings, Montana, has been recruited by Philip Morris to serve as a spokesperson in Montana. Jean Gowdy was recruited by PM, taken to New York for media training and returned to Montana as the executive director of a statewide smokers’ organization, Montana Smoker’s Caucus. This 1100-member “organization” consists of individuals on PMs database obtained through their Smoker’s Caucus Program. PM plans to set up media interviews for Gowdy around Montana.<sup>71</sup>

Starting in October 1990, Jean Gowdy would make numerous public appearances as the Executive Director of the Montana Smokers' Caucus in opposition to I-115, all the while maintaining the appearance of the group as an independent organization with no ties to the tobacco industry.

On October 11, 1990, the Montana Smokers' Caucus issued the press release, "Montana Taxpayers Unite Against Initiative-115," in which Gowdy argued that I-115 would create more costly, unnecessary bureaucracy and would "continue the dangerous trend of government intrusion into people's lives and personal decisions."<sup>72</sup> Gowdy also claimed that it would further burden those in the lower income brackets and that the initiative was an unwise use of state resources.<sup>72</sup> According to the press release, the "Smoker's Caucus originated in 1988 by citizens of Montana who choose to smoke and who are concerned about fair public policies. Since then, more than 1100 Montanan residents have expressed interest in defending their individual rights."<sup>72</sup>

The Montana Smoker's Caucus press release was mentioned in 6 Montana Newspapers (*Montana Standard*; *Billings Gazette*; *Great Falls Tribune*; *The Daily Inter Lake*; *Helena Independent Record*; and *Times-Clarion*), from October 13, 1990 to November 4, 1990, for a total of 32 times. The combined circulation of all newspapers was 214,541 (Montana's population in 1990 was 799,065).<sup>50, 72</sup> These newspapers carried the arguments in the Smoker's Caucus press release (that the excise tax was "regressive and unfair," would "further burden Montanans in the lower income bracket," and that more pressing issues of "salary levels of state employees, the quality of the universities and public school system and the environment" should take priority) to the broader public. Gowdy was also quoted in several Montana newspapers as saying, "I don't feel it's a smoker vs. non-smoker issue, it's the additional taxes and bureaucracy." Additionally, Gowdy appeared on 5 local news programs in Great Falls, Helena, Butte, and Bozeman, and spoke on 3 radio talk shows from October 15, 1990 to October 24, 1990, each time repeating the arguments made in the press release.<sup>72</sup>

None of the interviews with Gowdy reported any affiliation or funding by the tobacco industry, and some newspaper reports even strengthened the impression that the Montana Smoker's Caucus was entirely independent of tobacco industry influence. The *Billings Gazette* on November 4, 1990 reported that the "Smokers Caucus is not affiliated with the Tobacco Consumers, Distributors and Producers Opposed to Unfair Tobacco Sales Taxes."<sup>72</sup> In an October 15, 1990 interview on the KMBN Talk Radio show in Bozeman, Gowdy was questioned about how the organization was formed. In her response, Gowdy's did not mention her affiliations with R.J. Reynolds or Philip Morris.<sup>72</sup>

I-115 was defeated on November 6, 1990, by a margin of 59% to 41%, with voter opposition coming mainly from rural counties and the two largest cities, Billings and Great Falls.<sup>50</sup> The initiative received its strongest support from the smaller cities of Missoula, Bozeman, and Helena.<sup>50</sup> About six months after the defeat of I-115, the July 17, 1991 edition of the *Smoker's Advocate*, published by Philip Morris, named Jean Gowdy as the Smokers' Advocate of the Month.<sup>73</sup> The article explained that Gowdy had fought a "war" against Montana's 1990 tax initiative by touring the state, appearing on television talk shows, speaking on the radio, and writing opinion letters to news editors. Though, curiously, no mention was

made of the Montana Smokers' Caucus or its claimed 1100 members, nor was the group mentioned in any of the tobacco industry documents since the 1990 tax initiative.<sup>73</sup>

### **TOBACCO ALLY GROUPS AT THE END OF THE 1990s AND INTO THE 2000s**

A series of Tobacco Institute Budget reports show that from 1995 to 1999 the tobacco industry had an account for contributions made in support of business and trade organizations in several states, including Montana.<sup>74-77</sup> Organizations that were listed in the Tobacco Institute's budget for financial support included the Montana Chamber of Commerce (a business advocacy group established in 1931), the Montana Liability Coalition (a cooperative effort between the Montana Chamber of Commerce and state businesses to address legal issues), the Montana Taxpayers Association and the Montana Tax Foundation (an advocacy group for fair taxes established in 1921), and the Montana Retailers Association (an umbrella organization that includes the Montana Restaurant Association which advocates and lobbies on behalf of retailers' interests).<sup>74-77</sup> Table 4 shows the yearly budgets for each organization as listed in the Tobacco Institute budget reports:

<b>Table 4: Tobacco Institute Budgets for Support of State Organizations 1995-1999</b> <sup>74-77</sup>					
<b>ORGANIZATION</b>	<b>1995</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>
Montana Chamber of Commerce	\$250	\$275	\$300	\$300	\$300
Montana Liability Coalition	-----	\$250	\$300	\$700	\$700
Montana Taxpayers Association	\$250	\$250	\$300	-----	-----
Montana Tax Foundation	-----	\$0	-----	\$400	\$400
Montana Retailers Association	\$250	\$250	\$300	\$300	\$300

In addition to the Tobacco Institute Budget reports, Philip Morris State Coalition Reports from 1999 and 2001 show that the company was attempting to establish alliances into the beginning the 21<sup>st</sup> century. The "Coalitions Summit Report, 1999 Volume II," prepared by Proactive Communications (a government affairs consulting firm established in 1996) from June 1999 shows that Philip Morris made several contacts through its PMUSA Field Action Team, and indicates attorney Steve Browning of the Helena firm Browning, Kalecyc, Berry, & Hoven, P.C (BKBH) as their state coordinator<sup>78, 79</sup> According to the 1999 report, attendees at "Montana's first Summit Meeting" were: the Montana Chamber of Commerce; Helena Chamber of Commerce; Speaker Pro Tem, Montana House of Representatives; Chairman, Montana Senate Finance Committee; Former President of the Senate/Missoula County Attorney; Montana Stockholders Association; and Philip Morris State Government Affairs lobbyist.<sup>78</sup> The main topic of discussion at the meeting was stated as "imparting information... regarding the possible DOJ lawsuit,"<sup>78</sup> In September 1999, the U.S. Department of Justice charged the major tobacco companies with a coordinated campaign of fraud and deceit in violation of the Racketeer

## Influenced and Corrupt Organizations laws.

Further explanation of Phillip Morris' Filed Action Team and state coalitions was given in the "2001 State Coalition Status Report," also prepared by Proactive Communications, which explained that "[s]tate coalitions are the foundation of the PMUSA Field Action Team..." and that "[i]t is through the coalitions that the company can properly communicate issues."<sup>80</sup> It further stated that

In this way the Regional and State Coordinators of the PMUSA Field Action Team serve as important political operatives and field representatives for the company. The relationships that we bring to the coalitions, and the new relationships that we forge, are the basis for all successful initiatives that we conduct on behalf of Philip Morris. Therefore, our determination in building new alliances on behalf of Philip Morris will continue to grow.<sup>80</sup>

The "2001 State Coalition Status" report again listed attorney Steve Browning of BKBH as the state coordinator, with 27 organizations in Montana that were described as "supporters, advocates, and Philip Morris friends" as of March 12, 2001<sup>80</sup>(Fig. 4).

American Legion	Montana Petroleum Marketers Association
Anheuser-Busch Distributor	Montana Pool & Billiards Halls
Eagles Lodge #16	Montana Restaurant Association
Helena Chamber of Commerce	Montana Retail Association
Montana Bowling Proprietors Association	Montana Society of Association Executives
Montana Agricultural Business Association	Montana Tavern Association
Montana Association of Counties	Montana Taxpayers Association
Montana Campground Association	Montana Wool Growers Association
Montana Chamber of Commerce	National Federation of Independent Business, Montana
Montana Farm Bureau	Rural Firefighters Association
Montana Food Distributors Association	Tobacco & Candy Wholesalers Distributors
Montana Hotel & Motel Association	Tobacco Retailer
Montana Petroleum Association	Veterans of Foreign Wars
	West Yellowstone Chamber of Commerce

Using third party allies and front groups to conceal involvement when fighting tobacco control policies is a common tobacco industry strategy because public knowledge of the industry's involvement increases support for tobacco control legislation.<sup>42, 68, 69</sup> This strategy had already been used in Montana during the 1990 cigarette tax initiative, thus it is reasonable to conclude that a main purposes of Philip Morris' state coalitions was to assist in the opposition of tobacco control policies while concealing the direct involvement of tobacco companies, enabling them to more effectively impact state policy development.

## TOBACCO INDUSTRY POLITICAL EXPENDITURES IN MONTANA

The tobacco industry spends a significant amount of money in Montana on campaign contribution to legislative candidates, constitutional officer candidates, and political parties, as well as through expenses incurred through the work of their state lobbyists. It should also be noted that financial contributions are made to state officials which are not recorded through the

Office of Political Practices, or any other supervising state government agency. For instance, Gov. Judy Martz, while serving as Governor from 2001-2004, was the honorary chairperson of the Montana Majority Fund, a tax-exempt political organization (under IRS Code Sec. 527) which was not subject to reporting rules by the Federal Elections Commission, and which received thousands of dollars of financial contributions from several tobacco companies (detailed in the section titled “Governor Martz’ Relationship with the Tobacco Industry” in this report). Also, Senator Ken Miller (R-Laurel) served as Montana’s State Public Chairman of ALEC (American Legislative Exchange Council), a national advocacy group made up of conservative state lawmakers, and which received financial contributions from the R.J. Reynolds Tobacco Company<sup>81</sup> (detailed in the section titled “Asking the Voter How to Spend the MSA Money” in this report). Such ties between the tobacco industry and state officials or political organizations are difficult to discover. As such, it is likely that the amount of financial expenditures reported by the tobacco industry is considerably less than the amount it actually spends in its efforts to affect tobacco control policy.

Organizations included as “tobacco industry” funding sources were: Brown and Williamson, Lorillard Tobacco Co., Philip Morris Inc. (which changed its name to Altria in 2003), R.J. Reynolds, Smokeless Tobacco Council, the Tobacco Institute, and US Tobacco. Miller Brewing Co. (owned by Altria) was also included for lobbying expenditures because the company did not make any substantial contributions to state legislative or statewide candidates, but did spend significant amounts in state lobbying. Organizations identified as tobacco industry allies were the Montana Tavern Association and the Hospitality PAC. Other tobacco industry allies, such as the Montana Gaming Industry Association, were not included because they made almost no campaign contributions. Campaign contributions from tobacco industry lobbyists were included, with each lobbyist given their own category (Jerome Anderson of RJR, Leo Berry of the BKBH Law Firm, Mark Baker of U.S. Smokeless Tobacco, and Mark Staples of the Montana Tavern Association). Contributions data for candidates and elected officials was collected for 1989-2002, and data for contributions to political action committees and lobbyist expenditures was collected for 1993-2002. A complete list of all candidates and elected officials for 2002 and their tobacco industry campaign contributions, as well as tobacco industry lobbying expenditures, are listed in the Appendix.

**Table 5: Summary of Tobacco Industry Expenditures 1989 - 2002**

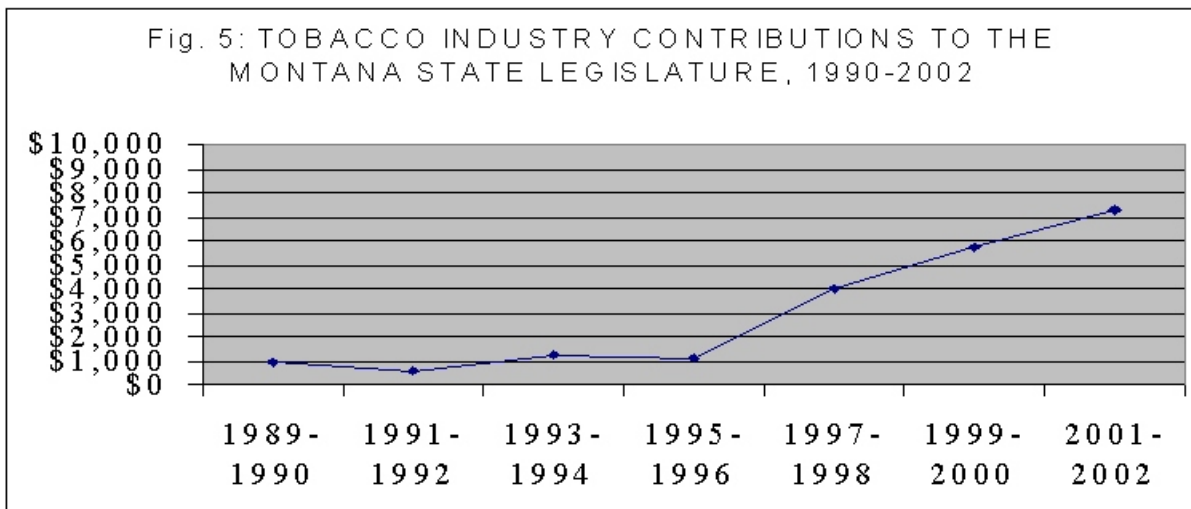
<b>ELECTION CYCLE</b>	<b>LEGISLATIVE CONTRIBUTIONS</b>	<b>STATEWIDE ELECTIONS CONTRIBUTIONS</b>	<b>PARTY PAC CONTRIBUTIONS</b>	<b>LOBBYING EXPENSES</b>	<b>TOTAL</b>
1989-1990	\$950	\$1,412,378	NA*	NA*	\$1,413,328
1991-1992	\$575	\$4,146	NA*	NA*	\$14,721
1993-1994	\$1,225	\$7,100	\$695	\$1,000	\$10,020
1995-1996	\$1,100	\$13,125	\$1,936	\$6,696	\$22,857
1997-1998	\$3,985	\$300	\$3,330	\$59,690	\$67,305
1999-2000	\$5,725	\$19,467	\$825	\$6,517	\$32,534
2001-2002	\$7,300	\$725	\$3,160	\$54,324	\$65,509
<b>TOTAL</b>	<b>\$20,860</b>	<b>\$1,457,241</b>	<b>\$9,946</b>	<b>\$128,227</b>	<b>\$1,626,274</b>

\* Indicates campaign finance data for these years was not available from the Montana Office of Political Practices.

The tobacco industry spent a total of \$98,043 in Montana from 1999-2002, a period that

included a gubernatorial election (2000), other statewide elections, and legislative elections. The amount spent includes campaign contributions to individual statewide candidates, legislators and legislative candidates, as well as to political parties, and lobbying expenditures made by tobacco companies and their allies. This was about an 8% increase from the amount spent by the tobacco industry and its allies from 1995-1998 when total expenditures were \$90,162 (Table 5), a period that also included a gubernatorial election (1996) as well as legislative and state campaigns.

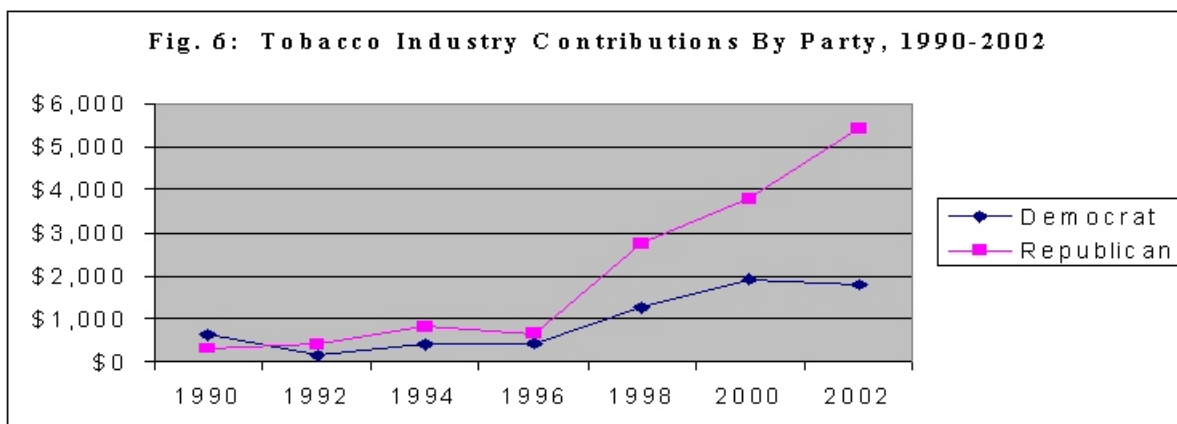
Financial contributions to legislative candidates from the tobacco industry and its ally groups have steadily increased since the 1995-1996 elections cycle (Fig. 5). While tobacco industry contributions to both parties have increased, Republican legislative candidates have received more tobacco industry contributions in each election cycle than Democrat legislative candidates since 1992 (Fig. 6). Furthermore, the difference between the contributions to Republicans and Democrats has widened since 1996.



Tobacco industry contributions to influential House and Senate committees were also examined, because such committees can play a significant role in tobacco control policy making. Of all the committees examined, only the House Committee on Appropriations received \$1,000 or more in tobacco industry contributions from 1999-2002 (Table 6). The House Committee on Appropriations reviewed all of the proposed bills dealing with the allocation of Master Settlement Agreement (MSA) money since 1999 (In November 1998, the attorneys general of 46 states reached a settlement with the four largest tobacco companies, called the MSA, designed to resolve litigation between many of the states involved in the global settlement agreement and the tobacco industry). This included the allocations received by the tobacco use prevention program, which have been a major point of conflict between tobacco control advocates and legislators wanting to spend MSA funds in other government areas (detailed in the section “The Master Settlement Agreement in Montana” in this report). Those in the committee receiving the most tobacco industry contributions were Appropriations Committee Vice-Chair Rep. John E. Witt (R-Carter) (received \$150; tobacco policy score of 2.3), Rep. Rick Ripley (R-Wolf Creek)(received \$200; tobacco policy score of 1.3), and William Glaser (R-Huntley)(received \$200; tobacco policy score of 3.0).



Contributions to statewide elections (which include statewide ballot initiatives and constitutional officers) and lobbyist expenditures have varied depending on the particular issues in that election cycle. Tobacco industry contributions to statewide elections was highest between 1989-1990, when tobacco companies made large contributions to oppose the 1990 statewide tax initiative (detailed in the section “The 1990 Cigarette Tax Increase Initiative and the Opposition Campaign by the Tobacco Institute” in this report). Tobacco industry contributions to statewide elections were also higher in the 1996 and 2000 election cycles, when there were elections for constitutional officers, such as governor.



Lobbying expenditures were higher than others years between 1997 and 1998, and between 2001 and 2002. Between 1997 and 1998, the majority of lobbying expenses came from the Montana Tavern Association, which spent \$41,025 in opposition to several proposed state liquor and gambling license restrictions in the 1997 Legislative Session. Also in 1997, Philip Morris paid \$14,700 in fees to its state lobbyist John Delano and Leo Berry. Berry was a partner in the Helena law firm Browning, Kaleczyc, Berry, & Hoven, P.C (BKBH), which was meeting with a variety of state officials and state organizations to coordinate Philip Morris’s PMUSA Field Action Team Program in the late 1990s and into 2001<sup>78, 79</sup> (detailed in the section “Tobacco Ally Groups at the End of the 1990s and Into the 2000s” of this report).

Lobbying expenditures from the tobacco industry were also relatively high from 2001 to 2002. In addition to continued efforts from tobacco companies to build and coordinate state coalitions during that time, the 2001 Legislative Session heard a great deal of debate regarding Gov. Judy Martz’ (2001-2004) proposed budget cuts in the state’s tobacco use prevention program. In 2001, tobacco use prevention program funding was cut to its lowest point under Gov. Martz, whose chief political advisors were tobacco industry lobbyist Mark Baker and Baker’s legal partner, tobacco industry lobbyist Jerome Anderson. It was also between 2001 and 2002 when Mark Baker created the Montana Majority Fund, a Republican committee to financially support state and national campaigns, which received thousand of dollars from tobacco companies. Gov. Martz also served as honorary chairperson of the Montana Majority Fund (detailed in the section “Governor Martz’ Relationship with the Tobacco Industry” in this report).

LAST NAME	FIRST NAME	PTY	DIST	TOBACCO CONTRIBUTIONS	TOBACCO CONTRIBUTIONS	TOTAL TOBACCO CONTRIBUTIONS	AVG. POLICY SCORE
				1999-2000	2001-2002	1999-2002	
Buzzas	Rosalie	D	93	\$0	\$0	\$0	8.7
Callahan	Tim	D	43	\$0	\$0	\$0	7.3
Franklin	Eve	D	42	\$0	\$100	\$100	8.5
Glaser	William	R	44	\$200	\$0	\$200	3.0
Hawk	Ray	R	62	\$0	\$0	\$0	3.3
Hiner	Cynthia	D	85	\$0	\$0	\$0	5.0
Jackson	Verdell	R	79	\$50	\$50	\$100	1.7
Jayne	Joey	D	73	\$0	\$0	\$0	6.0
Juneau	Carol C	D	85	\$0	\$0	\$0	9.3
Kaufmann	Christine	D	53	\$0	\$0	\$0	9.8
Lenhart	Ralph	D	2	\$0	\$0	\$0	4.0
McNutt	Walter	R	37	\$100	\$0	\$100	0.3
Morgan	Penny	R	21	\$0	\$125	\$125	1.3
Musgrove	John L	D	91	\$0	\$75	\$75	6.3
Ripley	Rick	R	50	\$0	\$200	\$200	1.3
Sesso	Jon	R	76	\$0	\$0	\$0	7.0
Sinrud	John	R	31	\$0	\$0	\$0	2.7
Taylor	Janna	R	11	\$50	\$0	\$50	1.3
Wells	Jack	R	69	\$0	\$0	\$0	1.7
Witt	John E	R	89	\$50	\$100	\$150	2.3
<b>TOTAL</b>				<b>\$450</b>	<b>\$650</b>	<b>\$1,100</b>	<b>4.5</b>

According to the Institute on Money in State Politics (a nationwide, nonpartisan, nonprofit organization that researches and documents state campaign finance contributions), the average amount of money raised by the winner of Montana Legislature elections in 2002 was \$5,619 for House members, and \$11,469 for Senate members. This level of campaign contributions is relatively small compared to larger states, such as California, so the amount of money received from the tobacco industry is, likewise, smaller in comparison.

In examining Montana's relatively low campaign contributions, it should also be noted that Montana has the most stringent contribution limits in the nation.<sup>82</sup> In 1994, Montana voters passed an initiative to lower contribution limits from \$250 per election cycle for House candidates and \$400 for Senate candidates, to (beginning in 1996) a maximum of \$100 per election for both House and Senate candidates. The contribution limit was raised in 2003 to \$130 for House and Senate candidates.<sup>83</sup> Contribution limits specified in the 2003 Montana Code for candidates running for other offices in Montana are low as well. Individual contributions to a gubernatorial candidate are limited to \$500. For candidates of other statewide elected offices, the limit is \$250.<sup>83</sup> As a result of these low limits, in the last ten years Montana has seen an increase in self-financed candidates who can give their own campaigns unlimited amounts of money, and who do not have to raise a large number of small individual contributions.<sup>82</sup>

### ***Tobacco Policy Scores***

In order to relate the information on political expenditures by the tobacco industry to

legislative behavior, “tobacco policy scores” were created for each member of the 2005 Legislative Session. The score was obtained from polling four individuals with extensive knowledge of policy making in Montana. Each legislator was evaluated based on a scale of 0 to 10. A score of 0 represented an extremely pro-tobacco industry legislator and a score of 10 represented an extremely pro-tobacco control legislator. The average for each legislator is reported (Appendix 1). Legislators with scores ranging from 0.0 to 3.9 are considered pro-tobacco industry, while scores ranging from 4.0 to 6.0 are considered neutral, and scores ranging from 6.1 to 10.0 are considered pro-tobacco control.

The legislators in office during the 2005 legislative session were scored and the Legislature received an average score of 4.8. Among the 76 Democratic legislators, the average tobacco policy score was 7.0. Among the 74 Republican legislators, the average tobacco policy score was 2.5. The lowest average tobacco policy score (indicating a pro-tobacco industry policy position) was 0, received by Rep. Rick Maedje (R-Fortine; received \$0 in tobacco industry contributions). The next lowest average tobacco policy score was 0.3, received by Rep. Joe McKenney (R-Great Falls; received a total of \$200 in tobacco industry contributions) and Rep. Walter McNutt (R-Sidney; received a total \$100 in tobacco industry contributions). The highest average tobacco policy score was 9.8, received by Rep. Mary Caferro (D-Helena; received a total of \$0 in tobacco industry contributions), Rep. Jill Cohenour (D-East Helena; received a total of \$0 in tobacco industry contributions) and Rep. Christine Kaufmann (D-Helena; received a total of \$0 in tobacco industry contributions).

### ***Relationship Between Campaign Contributions and Legislative Behavior***

Previous research has demonstrated a relationship between campaign contributions from the tobacco industry and policy making behavior among legislators.<sup>84, 85</sup> We sought to test this relationship in Montana by using the 1999-2002 campaign contributions data. The hypothesis was that tobacco industry campaign contributions were associated with sympathetic behavior towards the tobacco industry and that the tobacco industry may continue to provide or increase contributions to legislators who have acted in the tobacco industry's best interest in the past.

The simultaneous equations regression model consists of two equations. The first equation predicts the tobacco policy score given to legislators in 2005 from the total tobacco industry campaign contributions received from 1999-2002 and political affiliation. The second equation predicts the total tobacco industry campaign industry contributions received from 1999-2002 from the tobacco policy score and political affiliation. The total tobacco campaign contributions used here include contributions from the tobacco industry and contributions from tobacco industry third party allies.

The results of this analysis presented in Table 7 demonstrate a strong effect of tobacco industry contributions on legislative behavior, as well as a strong relationship between political party affiliation and legislative behavior. For every \$100 increase in tobacco industry contributions, a legislator's tobacco policy score decreased (i.e., became more pro-tobacco industry) by an average of 0.5 points. On average, controlling for the amount of tobacco industry contributions received, Republican legislators had tobacco policy scores that were 4.5 points below (i.e, more pro-tobacco industry) than those of Democrats. All of the findings were

statistically significant ( $p < 0.05$ ).

**Table 7 : Relationship Between Tobacco Industry Campaign Contributions Received Between 1999-2002 and Legislative Behavior**

Variable	Coefficient	Standard Error	t-value	p
<b>Dependent Variable=Tobacco Policy Score (0-10)</b>				
Constant	7.21	.23	30.88	<0.0001
Contributions (in dollars)	-.005	.002	-2.49	0.01
Republican	-4.5	.31	-14.46	<0.0001
R <sup>2</sup> =0.60 Adjusted R <sup>2</sup> = 0.59				
<b>Dependent Variable=Tobacco Industry Campaign Contributions (in dollars)</b>				
Constant	89.36	22.72	3.93	0.0001
Policy Score	-7.52	3.02	-2.49	0.01
Republican	-31.10	17.93	-1.73	0.08
R <sup>2</sup> = 0.04 Adjusted R <sup>2</sup> = 0.03				

## THE MASTER SETTLEMENT AGREEMENT IN MONTANA

In 1994, the Attorneys General of Mississippi and the Attorney General of Minnesota sued the four major tobacco companies (Brown and Williamson, Lorillard, Philip Morris, and R.J. Reynolds) to recover the costs to their states' Medicaid programs for treating tobacco related illnesses and to force changes in tobacco industry marketing practices. Several other states in the country soon followed, and in 1996, a group of attorneys general, private attorneys, public health advocates, and tobacco industry representatives began closed-door meetings to discuss a “global settlement” of all public and private litigation.<sup>86, 87</sup> This global settlement would have required Congress to grant the tobacco industry substantial relief from punitive damages in present and future litigation, as well as a cap on annual litigation payments. In exchange, the tobacco industry would have accepted federal regulation of marketing and advertising, as well as Food and Drug Administration jurisdiction on tobacco products. The tobacco companies would have also funded tobacco control education and made substantial payments to governments and private parties engaged in lawsuits. However, the immunity provisions which required changes to federal law, and thus legislation, opened the agreement up to public scrutiny.<sup>88</sup>

Though many proponents of the global settlement agreement saw it as an opportunity for new levels of progress, many in the public health community saw the agreement as “mortgaging the future,” and were especially opposed to the immunity provisions.<sup>86</sup> The global settlement would ultimately die in the Senate in April 1998.<sup>88</sup> Meanwhile, Florida, Mississippi, Texas, and

Minnesota each settled with the tobacco companies in separate agreements.<sup>88-91</sup> These agreements provided increasing amount of money to the states to reimburse them for Medicaid costs, as well as increasing restrictions on tobacco industry marketing and funding for state anti-smoking programs. Each settlement included a “most favored nations” clause which meant that better terms in subsequent settlements would apply to the earlier settlements.

Montana Attorney General Joe Mazurek (D) filed suit on behalf of Montana in May 1997.<sup>92,93</sup> In November 1998, the attorneys general of 46 states reached a settlement with the four largest tobacco companies, called the Master Settlement Agreement (MSA), designed to resolve litigation between many of the states involved in the global settlement agreement and the tobacco industry. Under the terms of the agreement, the 46 participating states would receive indefinite payments (approximately \$206 billion over the first 25 years), with Montana's share estimated to be \$922.1 million through 2025.<sup>92</sup> The first payment to Montana was made in 1999, with annual payments ranging from \$10.5 million to \$30.9 million over the first few years (Table 8)<sup>4</sup>

Year	Payment Amount
1999	\$10.5 million
2000	\$24.4 million
2001	\$26.8 million
2002	\$30.9 million
2003	\$28.9 million
2004	\$25.4 million

When the MSA was signed in 1998, the settlement was unanimously endorsed in Montana by the governor, state public health officials and various health organizations.<sup>94</sup> Montana governor Marck Racicot (R), who later became the Chairman of the Republican National Committee in 2002, applauded the deal, saying, "it is time for our state and our country to acknowledge and attack what is perhaps our greatest public health challenge."<sup>94</sup> Gov. Racicot, who had served as Attorney General from 1988 to 1992, had a thorough understanding of the MSA and was supportive of tobacco control, and had a good relationship with Attorney General Joe Mazurek, who advocated for Montana’s involvement in the MSA, as well as for the use of MSA money for health programs and tobacco use prevention.<sup>95,96</sup> Health organizations also publicly supported the MSA. Art Dickhoff of the Montana chapter of the American Cancer Society called the decision a landmark effort to stem smoking and protect children from being targeted by the tobacco industry.<sup>94</sup> Dennis Alexander, Executive Director of the American Lung Association of the Northern Rockies, said that the agreement was “a positive first step in protecting public health from an addictive product that kills nearly a half-million people each year in this country.”<sup>94</sup>

Because state attorneys general do not have authority over state spending, the MSA contained no provisions with regard to the ways in which the states would spend their funds.<sup>88</sup>

However, even before the state had agreed to the MSA, Montana officials were expressing a desire to divide the money between the general fund and public health programs. The Public Health and Human Services Department suggested that 30 percent of the money be put into the state's general fund and the remainder be divided evenly among three programs: "One would be aimed at preventing and reducing tobacco use, another would create an endowment to improve the general health of Montanans and the third would help pay for health insurance for poor children."<sup>94</sup> However, the strong desire of health advocates and state officials to use the MSA money mainly on health programs, with some portion going towards tobacco control programs, would be overwhelmed by the number of state legislators vying to use MSA funds for various projects. As would be the case in almost every state that participated in the MSA,<sup>97</sup> only a small portion of the MSA money in Montana would end up being devoted to tobacco control programs.

By January 1999, Montana state legislators had filed 14 bills with various ideas on how to divide the tobacco settlement money, with proposals ranging from building a multimillion-dollar dinosaur museum to giving tax incentives to small businesses for offering health benefits. A divide between Montana's two major political parties soon formed over the issue, with Democrats wanting to put the money in a trust fund to help pay for future medical costs, while Republicans wanted the money to go toward tax relief. A similar divide occurred over the allocation of Minnesota's MSA fund, where some elected officials wanted to create a health and social programs endowment fund and provide tax rebates, while tobacco control advocates favored funding a statewide comprehensive tobacco control program.<sup>7</sup> Diversion of MSA funds away from tobacco control programs had occurred in almost every other state as well. By 2004, only four states (Maine, Delaware, Mississippi, and Arkansas) had funded state tobacco prevention programs to the minimum level recommended by the Center for Disease Control's Best Practices for Comprehensive Tobacco Control Programs.<sup>98</sup>

<b>Bill Type - Number</b>	<b>Primary Sponsor</b>	<b>Status</b>	<b>Status Date</b>	<b>Short Title and Description</b>
HB 226	Sam Kitzenberg (R)	Tabled in House Appropriations Committee	1/15/1999	Directing \$100 million of the state's tobacco settlement proceeds to the department of commerce to be used as grants to fund an interpretive center and museum in northeastern Montana
SB 247	Bill Glaser (R)	Tabled in Senate Finance Committee	2/10/1999	Allocating tobacco settlement proceeds to provide Medicaid eligibility for certain children. The Department of Public Health and Human Services shall calculate the amount necessary to fund the implementation.
SB 489	John C. Bohlinger (R)	Failed to Pass	2/23/1999	Allocating 50% of MSA proceeds for a tobacco disease and use prevention program (33%), comprehensive health care for children (15%), past medical services paid by the general fund (12%), and the general fund (40%).

HB 372	John Cobb (R)	Tabled in House Appropriations Committee	3/15/1999	Allocating tobacco settlement proceeds: 35% to the general fund for reimbursement for medical services; 25% to the department of health; 30% to the tobacco settlement account; and 10% of each payment to the department of health to subsidize health insurance premiums.
HB 613	Jeff Mangen (D)	Tabled in House Appropriations Committee	3/15/1999	Appropriating \$1 million a year from tobacco settlement funds for the Voice Against Tobacco state demonstration project education curriculum and media program against youth tobacco use to be administered by the Department of Public Health and Human Services
HB 131	Betty Lou Kasten (R)	Failed on 3 <sup>rd</sup> Reading in the House	3/26/1999	<b>Tobacco Settlement Proceeds Use: Allocating MSA money to create a health and long-term care trust fund; a local health and prevention grants program; and a health and prevention funding advisory board.</b>
HB 303	Billie Krenzler (D)	Tabled in House Appropriations Committee	3/18/1999	Restricting the use of MSA proceeds to purposes related to the original claims made in the legal action against participating tobacco companies.
HB 240	Emily Swanson (D)	Tabled in Senate Taxation Committee	4/13/1999	<b>Allowing a 5-year tax credit for certain employers who make a health benefit plan available to their employees</b>
SB 323	Steve Doherty (D)	Failed on 3 <sup>rd</sup> Reading in the House	4/19/1999	<b>Submitting to the qualified electors of Montana an amendment to the Montana Constitution to require the legislature to dedicate 50% of the MSA proceeds to a permanent trust fund and to allow the interest and income to be appropriated for health care programs</b>
SB 359	Eve Franklin (D)	Signed by Gov.	4/22/1999	Creating a reserve fund for payments of future claims by requiring tobacco products manufacturers who have not previously settled with the state to become a participating manufacturer in the MSA or make annual deposits into a qualified escrow fund.
HB 536	Betty Lou Kasten (R)	Signed by Gov.	4/30/1999	Allocating \$2 million from MSA proceeds to support the Montana Comprehensive Health Association health insurance plans

SB 81	John Harp (R)	Signed by Gov.	5/6/1999	Establishing the children's health insurance program (CHIP) and appropriating \$8 million of MSA proceeds to fund the program.
<b>HB 2</b>	<b>Tom Zook (R)</b>	<b>Signed by Gov.</b>	<b>5/10/1999</b>	<b>General Appropriations Bill: Appropriating Money to Various State Agencies for the Biennium</b>
<b>Bills in bold font indicate those that progressed farther into the legislative process and were the subject of some debate, which are discussed in the following paragraphs.</b>				

In Montana, some of the proposed MSA allocation bills would be defeated almost immediately, while others were the subject of more prolonged debates and media attention. Tobacco control advocates appeared at some of the committee hearings to support the use of MSA money for tobacco prevention and health programs, though they seemed generally unprepared to oppose all of the different interests that wanted the MSA funds for various government programs, especially in a Republican controlled legislature that wanted most of the money for tax relief. Indeed, health advocates might have been even less successful if not for Governor Racicot's support of tobacco prevention and public health policies, and his strong popularity in the state.

Table 9 lists all of proposed tobacco settlement allocation bills in the 1999 regular session, ordered by the date of the last action taken on each bill. Those bills that progressed farther into the legislative process and were the subject of some debate are in bold font and discussed in the following paragraphs, as opposed to those bills that were quickly rejected or passed without substantial debate.

***House Bill 131: An Attempt to Allocate MSA Money to Health Care Programs***

Rep. Betty Lou Kasten (R-Brockway), who had commented about the many proposed MSA funding bills that “[t]his is such a grab bag I think an awful lot of people are energized with ‘fund this’ and ‘fund that,’” herself sponsored a proposal on behalf of Gov. Marc Racicot (R), House Bill 131 to put the money in a health care trust fund and grants.<sup>99</sup> HB 131 was introduced on December 22, 1998, and was referred to the House Appropriations Committee for consideration.<sup>100</sup> The bill was generally considered the front-runner in January 1999, and would have established a trust with the MSA money to be allocated as follows: 33% of the money for a comprehensive program to prevent and control tobacco use; 15% percent to the state's child health insurance program (CHIP); 22% to cover Medicaid costs for long term health care; and 30% towards the state's general fund.<sup>99-101</sup>

At the House Appropriations Committee hearing on January 21, 1999, twenty-four proponents testified for HB 131, including representatives of the Governor’s office, the American Lung Association, the American Heart Association, the American Cancer Society, and the Montana Hospital Association.<sup>102</sup> Backers of the HB 131 emphasized that the original intent of the MSA was to alleviate the negative affects caused by smoking, so a significant amount should be dedicated to tobacco use prevention. No opponents of HB 131 testified at the hearing.<sup>102</sup>



Attorney General Joe Mazurek (D), in addition to testifying at the House Appropriations Committee hearing, was also lobbying lawmakers to use the settlement money for health and prevention programs and touring the state to get public support for HB 131. Mazurek's message to legislators was to remind them that the reason Montana joined the multi-state lawsuit was to get compensation for health damages caused by the sale and use of tobacco, and to "stop children from starting" tobacco use.<sup>99, 101</sup> In addition, Mazurek and Chris Tweeton, the Chief Deputy Attorney General who had also worked on the tobacco lawsuit, held public forums titled "Stop kids from smoking or fill potholes."<sup>103</sup> The two had held four such forums (which were organized by the major health groups with M&R Strategic Services, a public affairs consulting firm established in 1991) by March 9, 1999, in which Mazurek explained that there would be constant pressure on lawmakers to "chip away" at the settlement. Mazurek thought that even though "the Legislature has taken a pretty responsible view of this so far," he warned that "there may be pressure to push this money in other directions."<sup>101</sup>

The Republican majority in the House strongly supported the use of MSA money for other government programs, such as tax relief, and on March 19, 1999, the House Appropriations Committee amended HB 131 and then approved it in a 17 to 1 vote.<sup>100</sup> As amended, the bill's allocation to the general fund was increased from 30% to 40%, because legislators wanted more money available in the general fund. The rest of the MSA money was to be divided as follows: 10% to the children's health insurance plan (CHIP), 3.4% to the Montana Comprehensive Health Association, and 46% to the Department of Health for health and prevention programs, which included tobacco use prevention and control.<sup>100</sup> Programs funded by these grants could include efforts against use of tobacco, but also could address other health issues.<sup>100, 104</sup>

Though supporters of tobacco control were disappointed by the amendment, they did not consider it a major setback, since much of the money would still be available for health and tobacco use preventions programs, and would be allocated at the direction of the Public Health and Human Services Department under a tobacco-control friendly administration. In reaction to the amendment, Attorney General Joe Mazurek told the Associated Press that he would have preferred more money for the health-care trust and less for the general fund, but thought the distributions showed a commitment to public health, especially considering that some states had found far-flung uses for their tobacco money, and had put much less money toward tobacco-control.<sup>97, 104</sup>

On March 24, 1999, HB 131 reached the full House, and the Republican majority (which had been publicly expressing since January 1999 a desire to use the tobacco settlement money primarily for tax relief) successfully pushed an amendment by House Majority Leader Larry Grinde (R)-Lewiston), (who received \$650 in tobacco industry contributions between 1990-2002) to reserve half the MSA for tax relief in the 2003-2005 biennium.<sup>99, 105</sup> Grinde's reasoning behind the proposal was that the taxpayers deserved financial compensation after years of helping to pay the states share of Medicaid coverage for people with tobacco-related illnesses.<sup>105</sup> Legislators voted 50-48 that half of each annual payment had to be set aside in a special account for future legislatures to spend on providing tax relief.<sup>105</sup> The remaining half of the MSA payments would be divided among tobacco prevention projects and health care programs, in accordance with the previous percentage allocations in HB 131 (Table 10).

<b>Table 10: Alternate versions of House Bill 131, January 1999 to March 1999</b>		
<b>As Originally Proposed (January 1999)</b>	<b>As Amended by House Appropriations Committee (March 1999)</b>	<b>As Amended by State House of Representatives (March 1999)</b>
33% of the money for a comprehensive program to prevent and control tobacco use	46% to the Department of Health for health and prevention programs, including, but not limited to, tobacco use prevention and control.	<ul style="list-style-type: none"> <li>● 50% shall allocated as follows:               <ul style="list-style-type: none"> <li>- 46% to the Department of Health for health and prevention programs, including, but not limited to, tobacco use prevention and control</li> <li>- 40% towards the state's general fund</li> <li>- 10% to CHIP</li> <li>- 3.4% to the Montana Comprehensive Health Association;</li> </ul> </li> <li>● 50% allocated for the purpose of tax relief, as determined by the next legislature</li> </ul>
30% towards the state's general fund.	40% towards the state's general fund.	
15% percent to the state's child health insurance program (CHIP)	10% to the children's health insurance plan (CHIP),	
22% to cover Medicaid costs for long term health care, and	3.4% to the Montana Comprehensive Health Association	

A preliminary House vote had originally passed HB 131 by 64 to 36 on March 24, 1999 with bipartisan support. Many legislators believed that this particular vote in the House was not definitive, since debates over allocations in HB 131 would continue both in the House before the next vote, and again when it was transmitted to the Senate where a joint conference committee would have to resolve House-Senate differences.<sup>105</sup> But on the next day, March 25, 1999, many House Democrats, guided by Minority Leader Emily Swanson (D-Bozeman) and joined by House Republicans, opposed the bill because of the new government programs it would create. The combined opposition against HB 131 resulted in a 42-57 defeat.<sup>105</sup>

In explaining her opposition to HB 131, Swanson explained that “Democrats believe it is more important to fund health care programs for Montanans than it is to give multinational corporations tax breaks,” and that Democrats wanted to send a message: “We didn’t want to go out of here saying we approved of any of it. That money was never intended for tax relief.”<sup>105, 106</sup> Swanson also gave indications that she believed MSA money could be more successfully allocated through other bills, and expressed confidence that MSA spending for tobacco use prevention and health care could be added to the bill that allocates the budget for all state government departments, House Bill 2.<sup>106</sup> Indeed, Swanson would unsuccessfully attempt to achieve the same MSA allocations specified in HB 131 with another bill she sponsored, HB 240. Swanson would also propose allocations of MSA money for tobacco use prevention and health programs under HB 2, the state general allocation bill, would become one of most debated issues at the end of the 1999 session.

***House Bill 240: Another Attempt to Get MSA Allocations that were Not Approved in HB 131***

The state Democratic and Republican parties became more polarized over the spending of MSA money, and the degree of cooperation between them further deteriorated, with the

attempted passage of House Bill 240. HB 240, sponsored by House Minority Leader Emily Swanson (D-Bozeman) would have created a 5-year tax credit for individual and small business employers as an incentive to provide health care to employees.<sup>107</sup> Also within the bill, though it was not indicated in the bill's title, was a provision specifying that "[f]unds deposited in the tobacco settlement trust fund account may be used *only* to provide refunds to employers providing health care benefits pursuant to [HB 240]," thereby excluding all other uses of MSA funds.<sup>107</sup>

When the first hearing regarding HB 240 took place before the House Joint Select Committee on Jobs and Income on January 11, 1999, Swanson's description of the bill and all proponent testimony (which included State Auditor Mark O'Keefe (D), and representatives from the Montana's Farmer's Union, the Hotel Employees and Restaurant Union, and Blue Cross and Blue Shield of Montana), focused heavily on the need to provide health care to employees of smaller business, and the inability of lower wage workers to pay for medical services<sup>108</sup> None of the proponent testimony mentioned that HB 240 excluded all other uses of the MSA money, and no opponents to HB 240 testified.<sup>108</sup> The House Committee on Jobs and Income passed the bill on January 19, 1999, and referred it to the House Committee on Taxation for review.<sup>107</sup>

At the February 1, 1999 hearing for HB 240 before the House Committee on Taxation, many of the same proponents again testified, and were joined by representatives from the American Association of Retired Persons, the National Federation of Small Business Association, and the Montana Association of Health Care Providers Association, along with some individual business owners.<sup>109</sup> The lack of affordable health care and medical services for low income workers was reiterated as the main focus in proponent testimony.<sup>109</sup> Again, no mention was made of the HB 240 provision that excluded all other uses of MSA money, and no opponents to HB 240 testified. HB 240 was passed in the House Taxation Committee on March 29, 1999, and sent to the full senate for consideration.<sup>107</sup>

HB 240 passed in the House by a vote of 88 to 12 on March 30, 1999.<sup>107</sup> The next day, April 1, 1999, the *Billings Gazette* and the Associated Press reported that the provision in HB 240 making MSA money exclusive to its purposes had unknowingly slipped by Republican legislators.<sup>110, 111</sup> Swanson admitted to reporters that she intentionally omitted any mention of the MSA provision in hopes that she could keep the bill alive, stating, "I didn't want to give them [Republican legislators] an excuse to kill the bill," and believed that HB 240 had a better chance of being passed if it reached the Senate.<sup>110, 111</sup> Most Democrats felt that the intended and most appropriate use of the MSA money was for health care programs, and Swanson asserted that the tax incentives under HB 240, which would increase health care insurance among low and middle wage workers, fit well with that intent, stating that "[i]f this isn't health care, what is?" Swanson also expressed her belief that HB 240 would prevent Republicans from diverting MSA money to non-health related programs such as corporate tax relief.<sup>110, 111</sup> In response to reporters who wondered how representatives could vote for HB 240 without being aware of the language the exclusively allocated all of the MSA money, House Speaker John Mercer (R-Polson) stated, "[t]hat issue didn't come up," and that "it slipped through."<sup>110, 111</sup> Mercer also expressed his belief that the MSA money was meant for tax relief, as well as for health care programs.<sup>110, 111</sup>

On April 13, 1999, the Senate Committee on Taxation held a hearing on HB 240, where sponsor Emily Swanson revealed what appeared to be a long developed strategy to reintroduce the MSA allocations that had failed to pass in HB 131 (Table 11 ). Swanson’s testimony in favor of the bill was joined by proponents State Auditor Mark O’Keefe and representatives of the National Federation of Independent Businesses and the Montana Farmer’s Union. The sole opponent testifying at the hearing was Speaker of the House John Mercer.<sup>112</sup> At the hearing, Swanson proposed amendments that would change HB 240 so that the MSA allocations were very similar to those set out in failed HB 131: 30% would be deposited in the general fund, with the remainder to be “appropriated by the legislature for health related programs, including but not limited to CHIP, the Montana Comprehensive Health Association, and health prevention grants.”<sup>112</sup>

Table 11 : Alternate Versions of HB 240	
January 11, 1999	April 13, 1999
5-year tax credit for individual and small business employers	30% to the general fund
Funds from the MSA may <i>only</i> be used to provide refunds to employers for health care benefits.	70% to be appropriated by the legislature for health related programs, including but not limited to CHIP, the Montana Comprehensive Health Association, and health prevention grants.

Speaker of the House John Mercer, in testifying against HB 240 at the Senate taxation committee hearing, apologized that the bill was before the Senate, characterizing it as an attempt to reintroduce the failed proposals of HB 131 into the Senate after sneaking the MSA allocation provisions through the House. Mercer then urged the committee to remove any reference to the tobacco settlement funds, saying “if it’s a good idea, then pass it without reference to tobacco money.”<sup>112, 113</sup> Bill sponsor Swanson, in her closing statement, noted that the failure of HB 131 was that it inappropriately gave half of the MSA funds to tax relief, when it should be used for the kinds of health-related purposes which would be achieved by her proposed amendments to HB 240.<sup>112, 113</sup> Although the Senate Taxation Committee accepted Swanson’s amendments, they subsequently tabled it. That same day, April 13, 1999, Senate Democrats made a motion to take the bill out of the Tax Committee and put it before the full Senate, but the motion failed in a 20-30 vote.<sup>107, 113</sup>

In addressing the Senate after the defeat of HB 240, Senate Majority Leader John Harp (R-Kalispell) said that the tobacco money would still go to pay for health programs, including health coverage for poor children and uninsurable adults, but that those allocations would be made in the final version of House Bill 2, the chief state spending bill for the upcoming two-year budget period. Harp also made reference to the controversial MSA allocation provision in HB 240 when he told the Senate, “[w]e’re going to be up front on how we spend the tobacco money,”<sup>107, 113</sup>

### ***Senate Bill 323: An Attempt to Allocate Half the MSA Money to Health Care Programs***

Senate Bill 323 was introduced on January 29, 1999 by sponsor Steve Doherty (D-Great Falls), and proposed submitting for public vote an amendment to the Montana Constitution that would require the legislature to dedicate 50% of the MSA proceeds to a permanent trust fund and the other 50% to be put into the general fund. The amendment would have allowed the interest from the trust fund to be appropriated for health care programs, though the allocation to various programs was not specified in the bill.<sup>114</sup>

At the February 5, 1999 hearing before the Senate Committee on Finance and Claims, Doherty explained that the 50% division in the bill resulted from his desire to find a balance between the immediate need for funding health care and prevention programs, and a desire to safeguard the fund from future uncertainties.<sup>115</sup> Other proponents of SB 323 testifying at the hearing were Chris Tweeten, Chief Counsel for the Attorney General, Art Dickhoff, representing the American Cancer Society (ACS); and Dennis Alexander, representing the American Lung Association (ALA). Tweeten explained that a statutory trust, as opposed to a Constitutional trust, would be illusory because it could be raided when a simple majority of the legislature wanted the money. A Constitutional trust, as laid out in SB 323, would require approval of two-thirds of the members of each house of the legislature. Dickhoff of the ACS, in supporting SB 323, suggested that a portion of the money dedicated to health programs under the bill be used for a comprehensive tobacco control program, and Alexander of the ALA advised the committee that the trust would be good idea because funds would be needed for health care costs in the long term.<sup>115</sup> No opponents of SB 131 testified at the hearing. The Senate Finance Committee passed the bill in a 15 to 2 vote and referred it to the Senate Public Health Committee for consideration.<sup>114</sup>

At the February 15, 1999 hearing for SB 323 before the Senate Committee on Public Health, Welfare and Safety, sponsor Doherty reiterated the reasoning behind the bill and was joined by proponent testimony from Attorney General Joe Mazurek and Jim Smith from the American Cancer Society.<sup>116</sup> Mazurek again explained the illusory nature of a statutory trust, since it could be removed by a simple majority of the legislature, and noted that such dismantling of statutory trusts had previously occurred in Montana. Thus, Mazurek explained, a Constitutional trust was necessary to truly protect the MSA funds.<sup>116</sup> The Committee on Public Health approved the bill in a 9 to 2 vote on February 18, 1999, and sent it to be heard by the full Senate. On February 22, 1999, the Senate voted against SB 323 in a 24 to 26 vote, but because it was a constitutional amendment proposal, the bill had to be heard by the full legislature, and was required to receive two-thirds support, or a combined total of 100 affirmative votes, from both House and Senate. Thus, it was required that SB 323 be voted on by the House. Since SB 323 had received only 24 votes in the Senate, it would need to receive 76 House votes to make it to the ballot.<sup>117</sup>

A hearing in the House Human Services Committee was held on March 19, 1999, where 11 proponents testified, including Attorney General Joe Mazurek and representatives of the American Lung Association of Montana, the American Cancer Society, the Montana Senior Citizen's Association, the Montana's Nurse's Union, the Citizens with Tobacco Induced

Diseases group, and the Better Breathers group. No opponents testified against SB 323, and the House Human Services Committee passed the bill in a 12 to 5 vote on April 9, 1999.<sup>118</sup>

Because the number of necessary House votes needed for passage was so high, the final vote on SB 323 was considered by reporters to be a mere formality before its ultimate failure. The members of the Republican majority in the House had already publicly expressed that the 50% set-aside in the bill was too high, and Gov. Racicot, though in favor of putting the money into a trust fund, initially was not strongly supportive of creating a constitutional trust because he wanted the MSA money available in case the state needed it in the future.<sup>115, 117</sup> Rep. Tom Zook (R-Miles City), Chairman of the House Committee on Appropriations, commented to reporters that under SB 323 the state would have a large amount of money unavailable for future government programs. Zook said that “[y]ou really can't project all the needs that are going to be there,” and that “the more flexibility you allow your future legislators, the better off you'll be.”<sup>117</sup> On April 19, 1999, the House vote on SB 323 was tied at 50 to 50, twenty-six votes short the number needed for passage.

Though SB 323 failed, the idea of asking voters to put a large portion of the tobacco-settlement into a health care trust fund would return only months later, and with greater political support.<sup>119</sup> Until then, legislators and health advocates would be busy working on how MSA funds were to be divided by the state's general appropriations bill, House Bill 2. It had also become clear that the Republicans preferred allocating the MSA money through HB 2, which would not lock up the funds into specific programs or purposes, thereby giving legislatures more control of the money. An April 17, 1999 Associate Press article reported that Senate Majority Leader John Harp (R-Kalispel) said the general fund would be an appropriate place to put the MSA money, and that decisions on how to allocate the MSA money to CHIP and other health related programs were best left to the budget experts on the House Bill 2 conference committee.<sup>117</sup>

### ***House Bill 2: MSA Allocations are Decided Under the State's General Funding Bill***

Since the MSA money had not been legislatively designated to a specific agency or purpose, the money would be placed into the general fund and allocated through House Bill 2, the General Appropriations Act of 1999 which allocated money to various agencies for the biennium (2000-2001).<sup>120</sup> On April 19, 1999, state legislators in the House-Senate Free Conference Committee held a hearing regarding proposed amendments to House Bill 2, including the amendments that designated where money from the first MSA payment would be placed.<sup>121</sup>

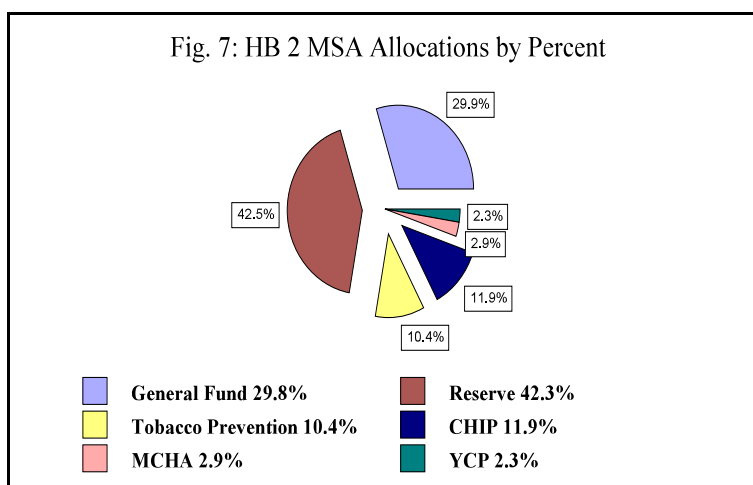
Governor Racicot recommended \$3.5 million per year (or \$7 million for the biennium) for the establishment of tobacco control and prevention programs,<sup>96</sup> which was approved by the Conference Committee, though specific program guidelines were not laid out in HB 2.<sup>121</sup> Rather, funding for tobacco prevention and control programs would be decided by the Department of Health and Human Services, which would be in charge of developing programs specifics.<sup>120</sup> During the 1999 legislature session, the lack of specific tobacco control guidelines in such proposed bills was not a major concern for tobacco control advocates. Given the tax-relief

oriented Republican majority in the legislature, tobacco control would have a better chance of being funded under the Department of Health, which was run by a tobacco control sympathetic administration.

The House-Senate Conference Committee allocated the rest of the \$67 million of MSA money over the next two years as follows: \$20 million to the state general fund for government operations; \$28.4 million into a reserve, or budget surplus, which could not be spent until the next biennium; \$2 million for the Montana Comprehensive Health Association (MCHA); and \$1.6 million to the state Department of Military Affairs for the “Youth Challenge Program” (YCP) to be run by the state National Guard.<sup>120</sup> (Fig. 7) Additionally, \$8 million was also allocated for the Children’s Health Insurance Program (CHIP) under Senate Bill 81, sponsored by Senate Majority Leader John Harp (R) at the request of Governor Racicot.<sup>122</sup> SB 81, which received final legislative approval in the House on April 21, 1999 by a 79 to 20 vote, created a program to provide health care to children not eligible under the Montana medicaid program by contracting with insurance companies or other entities to provide health care through an insurance plan, a health maintenance organization, or a managed care plan.<sup>123</sup>

According to the minutes from the April 19, 1999 Free Conference hearing on HB 2, no proponent or opponent testimony was presented over the proposed motions concerning the MSA money allocations, with the exception of MSA funding for the Youth Challenge Program (YCP).<sup>121</sup> Supporting testimony was given for the YCP by General John E. Prendergest, head of

the Montana National Guard, who explained that the program would recruit 200 unemployed high school dropouts without criminal records for a 5 month military style boot camp where they could obtain a general-equivalency high school diploma.<sup>121, 124</sup> The budget request had not been previously heard by the legislature, and some legislators not on the Conference Committee criticized the “spur of the minute” approval of the program to newspapers as unfair to those proposals that had been



debated throughout the legislative session.<sup>124</sup> Gen. Prendergest explained that the budget request came so late because the program had only recently received approval for federal matching funds, and members of the Conference Committee defended the program as a good application of the MSA funds for a program that had already been used in 14 other states. The Conference Committee unanimously approved the motion to fund the Youth Challenge Program.<sup>121, 124</sup>

After the failed attempts in the 1999 legislative session to dedicate some MSA funds to health care and tobacco prevention programs through HB 131, HB 240, and SB 323, health advocates were disappointed that tobacco control funding was far below recommendations by the Center for Disease Control’s (CDC) “Best Practices for Comprehensive Tobacco Control

Programs - August 1999" for Montana (Appendix 12). However, health advocates did not see the legislative session as a total loss, and were happy that at least some money would go to tobacco prevention, especially considering the lack of such funding in other states.<sup>53, 125</sup> Also, health advocates like nurse Georgiana Gulden (who would become Supervisor of the Tobacco Prevention Section in 2004), believed that this initial funding would only be a starting point, and that subsequent funding would increase over time: "So my understanding is that the plan had been that [Governor Racicot] would do, you know, support the initial funding through the program and then each biennium would support increased funding until we were able to get to CDC best practices."<sup>126</sup>

The state health groups did not make an organized attempt to publicly express frustration over the legislature's MSA allocation to non-health related purposes,<sup>96</sup> although the shortcomings of tobacco prevention spending was pointed out briefly in the press.<sup>127</sup> An August 25, 1999 Associated Press article reported that information from the American Heart Association and Campaign for Tobacco-Free Kids had shown that Montana fell far short of the tobacco prevention spending minimums that were recommended by the CDC.<sup>127, 128</sup> Montana's \$3.5 million tobacco prevention allocation for the year 2000 was 37.4% of the CDC's minimum recommendation (the CDC recommendation range for Montana in 2000 was \$9.36 million to \$19.68 million per year).<sup>129</sup>

However, because other states that participated in the MSA had dedicated little or no money to tobacco prevention for the year 2000, Montana seemed to be doing relatively well. Although Montana's year 2000 allocation for tobacco prevention was only 37.4% of the CDC's minimum recommendation, the tobacco prevention allocations in twenty-seven other states for that year were less than 35% of the CDC minimum recommendation.<sup>128</sup> Montana State Attorney General Joe Mazurek stated to the Associated Press that "relative to some states, we did OK, but we ought to be doing better," and that "the bulk of this money should be used for public health; that's the bottom line... At a minimum, we should be meeting the CDC recommendations."<sup>127</sup>

### ***Summary of 1999 Legislative Session***

Tobacco control and public health advocates in the 1999 legislative session were unprepared for the heavy resistance on the part of legislators to fund tobacco use prevention and health programs with MSA money. This lack of preparedness likely resulted from an absence of any previous organized tobacco control movement on the statewide level (the last organized attempt to pass state tobacco control legislation was the failed 1990 cigarette tax initiative). Tobacco control advocates and health groups did make appearances at committee hearings and lobbied the 1999 Legislature in support of tobacco prevention program funding, but that was the extent of their efforts. Tobacco control advocates did not attempt a larger advocacy movement through public campaigning, choosing instead to focus their efforts on direct lobbying with the assistance of a Governor sympathetic to their cause. In addition, tobacco control advocates wrongly underestimated the potential for tobacco control programs to be underfunded. Cliff Christian, of the American Heart Association, said of the MSA allocation fights, "it was really a sleeper issue." However, the 1999 MSA allocations led advocates to create a much more organized state tobacco control campaign, starting with Constitutional Amendment 35 (to put 40% of the money into a health care trust fund through voter-initiative) in 2000.



**THE GOVERNOR'S ADVISORY COUNCIL ON TOBACCO USE PREVENTION THE EARLY TOBACCO USE PREVENTION PLAN**

Governor Racicot, considered an ally by state health advocates,<sup>53, 95, 96, 125, 126</sup> continued his support of tobacco control policies on September 22, 1999 when he signed Executive Order No. 15-99, the “Executive Order Creating the Governor’s Council on Tobacco Use Prevention.”<sup>130</sup> As stated in Executive Order 15-99, the Governors Council was created because “the Department of Public Health and Human Services received funding from the Centers of Disease Control and Prevention (CDC) and from the national settlement with the tobacco industry to establish a comprehensive tobacco use prevention program”<sup>130</sup> (in addition to MSA proceeds, the Montana DPHHS received a \$722, 400 grant from the CDC Office of Smoking and Health for fiscal year 1999-2000).<sup>93</sup> The stated purpose of the Governor’s Council was

... to provide advice to the Department of Public Health and Human Services in the implementation of a comprehensive tobacco use prevention program, in the expenditure of funds from the CDC tobacco prevention grant and from the tobacco settlement funding allocated to the Department, and in assuring ongoing coordination with other prevention programs”<sup>130</sup>

<b>Table 12: Membership of the Governor’s Council on Tobacco Use Prevention</b>
Senator Dale E. Berry, Representing the Montana House of Representatives
Verner Bertelsen, Representing Montana’s Senior Citizens
Nancy Davis Walker, Representing the Tobacco-Free Montana Coalition
Jeri Domme, Representing the American Heart Association
Dana Donovan, Representing Montana’s Youth
Nancy Ellery, Representing the Director of the Department of Public Health and Human Services
Laura Gebhart, Representing the Montana Public Health Association
Jon Hauzwell, M.D., Representing the Indian Health Service
Russell Hill, Representing Private Business,
David W. Johnson, D.D.S., Representing the Montana Dental Association
Linda Lee, Representing the Montana Campaign for Tobacco-Free Kids
Senator Bea MacCarthy, Representing the Montana Senate
Gail M. Michelotti, Representing the American Cancer Society
Joan Miles, Representing County Health Officers
Connie Olson, Representing Community-Based Tobacco Prevention Programs
J. Bruce Robertson, M.D., Representing the Montana Medical Association
Representative Trudi Schmidt, Representing the Montana House of Representatives
Commissioner Dale Sheldon; Representing the Montana Association of County Officials
Robert M. Shepard, M.D., Representing the American Lung Association
Representative Loren L. Soft, Representing the Montana House of Representatives
Tim Solomon, Representing Montana Law Enforcement
Todd Thun, Representing the Montana Nurses Association
Kristanne Wilson, Representing the MHA, an Association of Health Care Providers
Gordon Blecourt, Representing the Montana Wyoming Tribal Leaders Council and the Montana Wyoming Area

The membership of the Governor’s Council was also dictated by Executive Order 15-99, which stated that “the Council shall be composed of the Director of the Department of Public Health and Human Services or the director’s designees and not more than twenty-five additional members, who shall serve at the pleasure of the Governor...”<sup>130</sup> The order specified that the interests of particular groups had to be represented on the Council, and that the Council was part

of the Health Policy and Services Division of the Department of Public Health and Human Services, and was to exist for a two year period.<sup>93, 130</sup>

The members that Gov. Racicot appointed to the board, in the opinion of state health advocates, were all strong supporters of tobacco control (Table 12). Dr. Robert Shepard, one of the leaders of the failed 1990 cigarette tax initiative and who was appointed to the Advisory Board as a representative of the American Lung Association, described the committee as united by the common goal of reducing the toll of tobacco, stating that “in the original council, it wasn’t bad at all. We actually had pretty good support. And the legislators who were selected to be on the council to represent the legislature were actually pretty pro-tobacco-control.”<sup>93, 131</sup>

The Governor’s Advisory Council held its inaugural meeting on October 13, 1999, where it began the process of considering the formation of the Tobacco Use Prevention Plan, which would establish the mission, goals, and 5-year key strategic directions for the Department of Health and Human Services (DPHHS) Tobacco Use Prevention Program (TUPP) (Table 13). The DPHHS would determine the specifics of program development and implementation with advice from the Advisory Council.<sup>93</sup>

<b>Table 13: Goals of Montana Tobacco Use Prevention Plan.<sup>93</sup></b>	
<ul style="list-style-type: none"> <li>• Effectively coordinate with existing successful programs across the state including those serving special populations.</li> <li>• Establish a sustainable foundation for tobacco prevention activities through the strategic use of community resources.</li> <li>• Substantially reduce the prevalence of tobacco use among youths and adults, with a special emphasis on Native Americans.</li> <li>• Substantially increase smoke-free establishments, such as schools, workplaces, restaurants, and public facilities, thereby eliminating exposure to environmental tobacco smoke (ETS). Parents should be educated about reducing the exposure of children to ETS in their homes and cars.</li> <li>• Implement broad based prevention programs targeting youth ages 4 to 18.</li> <li>• Change Public knowledge, attitudes, and behavior from the acceptance of tobacco use to strong support for tobacco prevention in Montana.</li> <li>• Support and encourage health care providers as they address tobacco use among their patients.</li> <li>• Aggressively promote quitting</li> <li>• Develop a system to accurately assess progress and report on the program.</li> </ul>	

The Advisory Council held six meetings over a 5 month period to determine the best long term and intermediate strategies to achieve the overall goal of eliminating tobacco use in Montana. A draft plan was released to the public for review and comment through health groups, organizations represented on the Council, and the DPHHS website. The availability of the plan was also announced in newspaper advertisements.<sup>93</sup> The Council and the DPHHS sponsored a series of public meetings around the state from January 31 to February 3, 2000, where the public had an opportunity to voice opinions about the goals and directions proposed by the Council. The public was also invited to submit written comments directly to the DPHHS by mail or over the Internet. Based on the public's reaction, the Council and DPHHS revised the plan, and in March of 2000, the Tobacco Use Prevention Plan, which included the amount of emphasis that should be applied to each key strategic direction for the program (Table 14), was submitted to Governor Racicot.<sup>93</sup>

On March 14, 2000, the Council released its five-year plan to the public. Linda Lee, who in 2000 served as Chairwoman of the Governor's Advisory Council and represented the Montana Campaign for Tobacco Free Kids, stated "we want to make all Montanans aware that tobacco use has created a public health crisis that calls for action," and noted that the Medicaid program in Montana spends \$12 million per year on tobacco related illnesses, with federal estimates of the total smoking-related expense for Montana to be \$102 million per year.<sup>132</sup> Lee went on to say, "the plan assures that the tobacco settlement will be used to develop a comprehensive, long-term tobacco prevention program in Montana..."<sup>132</sup>

<b>Table 14: TUPP Strategic Directions in Key Program Areas - Emphasis (not necessarily proportion of funding) for each area.</b> <sup>93</sup>
<p><u>Statewide Programs - 30%</u></p> <ul style="list-style-type: none"> <li>• Central technical assistance and training resource for statewide and local programs, including technical assistance on clean indoor air and other policy change approaches. (25%)</li> <li>• Strengthen state and local clean indoor air laws. (20%)</li> <li>• Develop and implement well-coordinated, statewide campaign to reduce tobacco use and exposure to ETS. (20%)</li> <li>• Engage community and professional organizations in tobacco use prevention activities. (20%)</li> <li>• Establish statewide quitline. (15%)</li> </ul> <p><u>Community Based Programs - 35%</u></p> <ul style="list-style-type: none"> <li>• Establish tobacco use prevention and education coalitions in counties that do not have them, and strengthen the infrastructure of existing county programs (40%)</li> <li>• Expand resources available to support development and implementation of community/grassroots education and prevention programs. (30%)</li> <li>• Build on existing community programs and capacities, including health care providers and employers, to offer cessation services and assistance. (15%)</li> <li>• Provide communities with the assistance needed to for passage of local clean indoor air ordinances as well as voluntary clean indoor air policies. (15%)</li> </ul> <p><u>School Based Programs - 20%</u></p> <ul style="list-style-type: none"> <li>• Develop local community support for and carry out enforcement of tobacco-free school policies in all Montana Schools. (30%)</li> <li>• Develop tobacco use prevention education for students in grade K through 1, and develop a special tobacco use prevention program for Montana's institutions of higher education. (40%)</li> <li>• Provide access to tobacco education/cessation programs in all school districts in Montana for students and staff who use tobacco. (30%)</li> </ul> <p><u>Special Emphasis Populations - 15%</u></p> <ul style="list-style-type: none"> <li>• Native Americans</li> <li>• Spit Tobacco Users</li> <li>• Women of Childbearing Age</li> </ul>

Using the Tobacco Use Prevention Plan, the DPHHS, with the advice of the Governor's Advisory Board, began to build a program that, according to Dr. Shepard, was "remarkable for its reach and diversity," and one which health advocates "were confident would be successful, because all of its core elements had been proven in other areas."<sup>131</sup> In describing the TUPP in 2000, Georgiana Gulden, a DPHHS employee in 2000 and the Supervisor of the department's Tobacco Use Prevention Section in 2005, said that the program

was built on [CDC] Best Practices [for Comprehensive Tobacco Control Programs - August 1999]... So it was still early, so we were doing a lot of training... We had a huge amount of resources in that area to support communities. We had the media campaign, we had money in surveillance and evaluation. We didn't have any under chronic disease prevention specifically, but

I think we covered the other areas under Best Practices. Now it wasn't at the level recommended by CDC, but it was getting there. So it was really a well-done program.<sup>126</sup>

The Tobacco Use Prevention Program that was established by the DPHHS, with recommendations from the Advisory Council, included the funding of community prevention programs, a comprehensive smoking evaluation and monitoring system, the creation of two pilot media campaigns, and a statewide toll-free quit line to help those who wanted to stop smoking. All of these programs were of limited duration and funding, designed as pilot programs in order to produce results that could then be taken to the legislature as evidence to show the effectiveness of tobacco prevention programs. However, none of these program would be given sufficient time to produce results, as they would all be dismantled under the administration of Governor Judy Martz, who would take office in 2001. A major failing of Montana tobacco control advocacy in 2000 was the belief that such results oriented programs would help insure future funding for such programs. In actuality, building political support among the public and legislators are much more effective ways of securing tobacco control funding.<sup>133</sup>

### ***Funding of Local Programs***

The TUPP was launched in March 2000, and the DPHHS would fund and advise 15 already existing community based programs, approaching local health departments first. The TUPP would then work to develop new programs in some communities.<sup>93</sup> As described by Gulden, the DPHHS

approached, for the most part, [local] health departments..., but in some areas there isn't a dedicated health department or perhaps it's a health department with a health officer that doesn't support tobacco prevention. So in those instances we reached out to local non-profits and then, for the most part, they had people that were aware of the issue at some level and were willing to apply for funding and then we just asked with them to develop [a program].<sup>126</sup>

By June 2001, the DPHHS and TUPP had awarded 40 county contracts for tobacco use prevention programs, and had contracts with 12 Native American organizations for tobacco use prevention programs amongst 7 tribes and 5 urban Native American centers.<sup>134, 135</sup> Local tobacco use prevention program activities included community education on tobacco control issues, school programs, cessation and education for minors found possessing tobacco, merchant education about tobacco sales to minors, youth projects, community cessation projects, and public relations with local media outlets.<sup>93</sup>

Though the 2000 Tobacco Use Prevention Plan stated an intent to expand the state tobacco use evaluation system, the DPHHS already had a fairly comprehensive monitoring and evaluation system in place by the time the plan was released, which measured the trends in tobacco use, attitudes about tobacco, and second-hand smoke exposure. Data sources for the monitoring system came from various state agencies (Table 15), and the information would be used to assess the effectiveness of the program over time, as well as form a baseline for measuring necessary changes in the future.<sup>93</sup>

<b>Table 15: Data Collected by State Agencies for Tobacco Use Prevention Program Monitoring and Evaluation System.</b> <sup>93</sup>	
<b>AGENCY RESPONSIBLE FOR DATA</b>	<b>DATA COLLECTED (TIMELINE)</b>
Department of Revenue	<ul style="list-style-type: none"> <li>• Sales of cigarettes per capita, based on tax payments. (annual)</li> </ul>
DPHHS Addictive and Mental Disorders Division (AMDD)	<ul style="list-style-type: none"> <li>• Random checks of Montana vendors to assess sale of tobacco products to minors.(annual)</li> <li>• Survey of 8<sup>th</sup> to 12<sup>th</sup> graders assessing tobacco use and other health related behaviors.(biannual)</li> </ul>
DPHHS Chronic Disease Prevention and Health Promotion Program (CDPHPP)	<ul style="list-style-type: none"> <li>• Telephone survey of adults assessing tobacco use and other health-related behaviors (annual)</li> <li>• Telephone survey of adults to assess tobacco use, second-hand-smoke, knowledge, and attitudes (2000)</li> <li>• Telephone survey of adult Native Americans in or near reservations to assess tobacco use and other health related behavior. (biannual)</li> </ul>
Office of Public Instruction (OPI)	Survey of 9 <sup>th</sup> - 12 <sup>th</sup> graders assessing tobacco use and other health-related behaviors.(biannual, alternate years to AMDD survey)
DPHHS Vital Statistics	<ul style="list-style-type: none"> <li>• Tobacco use during pregnancy and related complications (Birth certificates)</li> <li>Deaths associated with tobacco use (e.g., cardiovascular disease, cancer) (Death certificates)</li> </ul>

### ***Media Campaigns***

#### ***- General Public Awareness Campaign***

The TUPP funded two media campaigns in 2000. One was a statewide campaign focusing on the harmful effects of smoking and second-hand smoke, and the other was the “Most of Us” campaign targeted to youth.<sup>126</sup> In July 2000, the TUPP began the statewide pilot campaign consisting of billboards, and television and radio advertisements designed to encourage Montanans to stop smoking.<sup>136</sup> Cindy Lewis, Communications Coordinator of the Project, was contracted by the DPHHS to oversee and manage the public awareness campaign, which was designed by Banik Creative Group, an advertising and public relations firm based in Great Falls, Montana.<sup>136</sup> The pilot statewide media campaign had a budget of \$500,000,<sup>137</sup> and it was stated by Lewis that the Tobacco Use Prevention Plan’s goals and strategies would serve as a guide for the campaign.<sup>136</sup>

The goal of the pilot campaign was to determine which commercials were most effective, and a poll would be conducted toward the end of the campaign. In one of the television ads, a memorial with thousands of names on it is shown as a narrator states, "If a memorial were built for every American killed by secondhand smoke, 53,000 names would be added to it every year."<sup>136</sup> Another TV ad showed a syringe full of a yellow substance, with the commercial stating, "It's one of the most addictive substances you can put in your body and once you start it's incredibly difficult to stop."<sup>136</sup> Among the billboards in the campaign, one showed a mother

smoking a cigarette in one hand while feeding her baby with the other, with a message that read, "Jenny smokes two packs a day. So does her mom" (Fig. 8).<sup>136, 138</sup> Other billboards used well-known tobacco images - one showed several brands of cigarette packs with the message, "pick your poison,"<sup>136</sup> and another showed a smoking cowboy (playing off the "Marlboro Man") with the words, "That fresh flavor kills 53,000 a year" (Fig. 9).<sup>138</sup> Radio ads would begin in mid-July 2000, and the pilot phase of the media campaign would end on September 10, 2000.<sup>136</sup> Towards the end of the pilot program in August 2000, a survey of 1200 Montanans showed that 18 to 45-year-olds in the state depended on newspapers more than those in other states, leading Banik communications to include newspapers ads in the campaign (Fig. 10).<sup>137, 138</sup>

Banik Communications and the Tobacco Use Prevention Advisory Board planned to then present a report and analysis of the campaign to the 2001 State Legislature, hoping that it would secure future funding for tobacco control media campaigns.<sup>136</sup> Tobacco control advocates knew that because state legislators in the 1999 session wanted MSA money allocated to several different programs, evidence would have to be presented if the Tobacco Use Prevention Program was to continue to receive funding. Nancy Ellery, a member of the Governor's Advisory Council on Tobacco Use Prevention representing the Director of the DPHHS, said that "[w]e have to show that the money produced results or we can kiss that cash good bye."<sup>139</sup>

#### *- The "Most of Us" Youth Targeted Campaign*

The second media campaign by the DPHHS and TUPP, the "Most of Us" Campaign, started to run in September 2000, and was implemented by Jeff Linkenbach, director of the Montana Social Norms Project at the Montana State University Health and Human Services Department, with funding from the Montana TUPP and the CDC (with a budget of just under \$1 million for an 8-month period).<sup>140-142</sup> The social norms approach was created by H. Wesley Perkins, a professor of sociology at Hobart and Smith College in Geneva, N.Y., who also served as a consultant on the Montana project.<sup>142</sup> The campaign would continue until May 2001, and targeted youth between the ages of 12 to 17 years old in seven counties (Missoula, Lake, Rivali, Mineral, Flathead, Sanders, and Granite). The primary message of the campaign was that "most of us," meaning 70% of Montana teens, were smoke free, in the belief that teen behavior is often driven by what they think their peers are doing.<sup>143</sup> Marketing methods for the campaign included television ads (six 30 second ads aired within three, eight week long periods) and radio ads (six 30 second ads aired within three, eight week long periods), as well as print and promotional items distributed to schools.<sup>140</sup>

According to the Montana Social Norms project at the Montana State University Health and Human Development Department, the "Most Of Us" Campaign showed successful results.<sup>142</sup> After the 8-month campaign, only 10-percent of the teens in the pilot area reported a first time use of cigarettes in academic year 2000-2001. By contrast, data from the state outside of the pilot program area showed that 17-percent of teens reported trying cigarettes for the first time in academic year 2000-2001.<sup>141, 142</sup> The seven pilot counties, which were chosen because of their media isolation that would allow for an undiluted message, contained about 21,300 teens between the ages of 12 and 17. Phone surveys were conducted of 800 Montana teens (half in the pilot area and half from the rest of the state) before the campaign began, and then again in April 2001, when the campaign was over.<sup>142</sup> The "Most of Us" Campaign also received public support

from state tobacco control advocates such as former Montana Attorney General Joe Mazurek and the Director of the DPHHS, Gail Gray, as well as from local tobacco control advocates Charlene Hansen, tobacco education coordinator at the Lake County Health Department, and Jamie Schroeder, Project Manager at the Missoula Girls and Boys Club, who said that local teens were embracing the program.<sup>142, 143</sup>

### ***Tobacco Quit Line***

Another element of the TUPP was the Montana Tobacco Quit Line, which began taking calls on August 31, 2000. The toll free line was operated by the Group Health Cooperative of Puget Sound under a one year contract with the DPHHS at a reported cost of \$694,000.<sup>144, 145</sup> The toll-free Quit Line provided a caller with an assessment of their addiction and offered consultation on how to go about quitting, as well as referrals to support services and resources across the state. The Quit Line had a goal of taking between 1,200 to 2,000 calls a year. By October 2000, the Quit Line had received 232 calls from prospective non-smokers, exceeding expectations by state health workers that the service would get approximately 150 calls by October 2000.<sup>144, 145</sup> Chris Devany, Program Manager for the Montana TUPP, distributed a press release stating that “[t]he tremendous response demonstrates that there is a real need for this type of program.”<sup>145</sup> By June 2001, the Quit Line received 1, 527 calls from prospective non-smokers.<sup>134</sup>

Though the Governor’s Advisory Council and the Tobacco Use Prevention Program had considerable support under Gov. Racicot’s administration, the TUPP would essentially be dismantled in the following administration under Governor Judy Martz, who took office in January 2001, leading to the end of the both media campaigns and the Montana Quit Line, which would end in July 2001. Because of the quick reduction in funding, the TUPP was unable to show any results from the initial programs, which Martz and Republican legislators then sighted as evidence that such programs did not work. However, before the end of Gov. Racicot’s tenure, health advocates, now better organized, would successfully put forward an initiative (CA-35) that would amend the state constitution, requiring part of the MSA money to be put into a trust fund, so that the interest could be used for health care and tobacco use prevention programs.

**Fig. 8: Banik Communications Ad #1**



**Fig 9 : Banik Communications Ad #2**





**Fig 10: Banik Communications Ad #3**

# All cigarettes have filters. They're called lungs.

The most toxic smoke from any cigarette is the smoke curling from its burning tip. It contains poisonous chemicals that are only filtered by those who breathe it in, including spouses, children, and friends who don't smoke. For information on how you can avoid second-hand smoke in your home, workplace or community, please contact your local health department.

**For help in quitting tobacco use of all kinds, call the toll-free Montana Tobacco Quit Line at 1-877-612-1585.**

**THIS MESSAGE PROVIDED BY THE MONTANA DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES.**

## ASKING THE VOTERS HOW TO SPEND THE MSA MONEY: CONSTITUTIONAL AMENDMENT 35

Though state health advocacy groups did not publicly express their frustration over the MSA allocations made in the 1999 Legislative session, their disappointment did lead groups such as the Montana Hospital Association, the Montana Medical Association, the American Lung Association of the Northern Rockies, and the Montana Dental Association to start meeting in order to discuss funding for health care and tobacco disease prevention.<sup>96</sup> Though this coalition of health groups were not officially organized as a joint entity at the time, they formulated a plan for a voter initiative that would put part of the MSA payments into a trust-fund for health care costs.<sup>96</sup> The idea for a trust was based on the failed attempt to create a MSA health care trust fund in SB 323 in the 1999 legislative session, and Montana's coal tax trust fund (a 1976 constitutional amendment that places 56% of coal taxes in a trust for the purpose of paying for environmental and social impacts of coal mining). The proposal would place 50% of the MSA proceeds into a trust, and the Legislature could only spend the principal of the trust with the approval of three-fourths majority of each chamber of the house.<sup>119</sup>

The health groups wanted to establish a trust fund because they believed that there would be attempts in future legislative sessions to raid MSA money for non-health related government programs.<sup>96</sup> Legislators who spoke with reporters in October 1999 also agreed that the MSA money would be a target for future funding. Senator Dorothy Eck (D-Bozeman), who agreed that lawmakers would continue to spend MSA money on non-health related programs, told reporters that "[t]he political reality in this state is unless it's in a constitutional trust, it won't survive."<sup>119</sup> Representative John Cobb (R-Augusta), who was actually opposed to creating the trust, also told reporters that it might be the only way to ensure that the MSA money is used for health care and tobacco prevention.<sup>119</sup> To place the initiative on the ballot, the health groups would need to collect at least 40,000 voter signatures, and members estimated the cost of the campaign to get the initiative on the November 2000 ballot would be between \$75,000 and \$100,000, and an additional \$150,000 to campaign for the initiative once it was on the ballot.<sup>119</sup>

In January 2000, Gov. Marc Racicot told the press that he was not yet ready to endorse the proposed ballot measure, explaining that though he liked the idea of a constitutional trust, he preferred setting aside 40% the MSA money into the trust (rather than 50%) and requiring a two-thirds approval by the legislature before being allowed to spend the principal (rather than a three-fourths majority).<sup>146</sup> The coalition's proposal would put \$427.5 million into a trust fund by 2025 and allow spending of \$528.2 in interest earnings by 2030, while under the version preferred by Racicot, \$342 million would be put into the fund and would allow spending of \$422.6 in interest earning.<sup>146</sup>

Mick Robinson, Chief of Staff for Gov. Racicot, explained that the administration was worried about dedicating too much of the MSA money to the trust fund, which might not leave enough money for the state to meet more immediate budget needs that came up over the next quarter century.<sup>146</sup> Racicot did not express a definitive position on the trust fund proposal, saying he wanted to think about the proposal more, and see a copy of the proposed initiative (which had not yet been written in January 2000), before deciding whether to support it.<sup>146</sup> Jim Ahrens, a spokesman for the coalition, said that members felt strongly that the 50% of MSA money should

be deposited into the trust, but that the size of the legislative vote to approve spending from the trust's principle was negotiable. Despite the difference of opinion on the specific numbers, Ahrens added that he was glad to hear Racicot favored a constitutional trust fund, instead of one created by a law that can be easily changed by the whims of future legislatures.<sup>146</sup>

Gov. Racicot would stay firm in wanting only 40% of the MSA dedicated to the trust, and the health groups, believing they needed Gov. Racicot's support to get the proposal passed, agreed to a compromise. As explained by Dick Paulsen, Executive Director of the American Lung Association:

We wanted at least fifty [percent of the MSA money to go into the trust]. Some in the group wanted sixty. Meeting with Governor Racicot though we found that the governor would support the concept of a trust fund, but personally would not support anything above 40%. And so with the negotiation at hand and having the enormous popularity of Governor Racicot behind it at a 40% level we thought as a group that it's a compromise on our part, but's a compromise we can win.<sup>96</sup>

On April 3, 2000, the Secretary of State approved the petition for the trust fund initiative prepared by the health groups, Constitutional Initiative 82 (CI-82). The health groups would next need to gather 40,000 signatures, which had to include 10 percent of the registered voters in 40 of the 100 House districts, by the June 23, 2000 deadline in order for CI-82 to be placed on the November 2000 ballot.<sup>147</sup> The initiative, now changed to fit more with Gov. Racicot's version of the proposal, would ask Montana voters to amend the state constitution to direct 40% of the tobacco settlement into the trust fund. Under the terms of the revised initiative, the Montana Legislature could appropriate 90 percent of each year's interest from the trust fund for health care programs. The remaining 10 percent would be reinvested in the trust. The principal of the trust could only be spent if two-thirds of the members of each house voted to do so.<sup>147, 148</sup>

The health group coalition backing the proposal formerly organized themselves as a ballot issue committee (a campaign committee organized to support or oppose a particular ballot issue), "The Alliance for a Healthy Montana" (AHM). AHM was made up of several health group organizations (Table 16 ) and individual contributors that provided services and financial support for the initiative campaign.

By April 2000, the trust fund proposal was receiving public endorsements by Governor Racicot, as well as from the Governor's Advisory Council on Tobacco Use Prevention.<sup>146</sup> On April 18, 2000, Gov. Racicot signed the petition to put CI-82 on the November 2000 ballot,<sup>148</sup> and told reporters that "I strongly urge Montanans to sign this petition and to take part in the electoral process." Gov. Racicot added that "this trust fund will provide funds for not only this generation, but also for generations of Montanans in the future. It's the kind of neighborly thing Montanans so typically do for one another."<sup>148</sup> Jim Ahrens, President of the Montana Hospitals Association (MHA) who also chaired the AHM, stated that he believed that the governor's endorsement was critical to the success of the initiative.<sup>148</sup>

On May 9, 2000, during a special session of the legislature, Sen. Bob Keenan (R-Bigfork), revealed a draft proposal to put a constitutional initiative on the November 2000 ballot, which would ask voters to place 100% of the MSA payments into the federal-state Medicaid insurance program.<sup>150</sup> Under Keenan's proposal, Montana would contribute \$30

million to Medicaid, which would generate \$78 million dollars in federal matching funds. Keenan reasoned that the plan generated the best financial return for Montana - a total of \$108 for Medicaid.<sup>150</sup>

<b>Table 16 : List of All Organizations that Made In-Kind, Service, or Cash Contributions to Alliance for Healthy Montana.<sup>149</sup></b>	
<b>All Organizations That Made Contributions and Provided Services to AHM</b>	<b>Cash Contributions made to Trust-Fund Initiative Campaign (not counting in-kind contributions or volunteer services)</b>
American Association of Retired People	\$4,000
American Cancer Society - Northwest Division	\$1,667
American Lung Association	\$1,667
Blue Cross Blue Shield of Montana	\$5,000
Center for Tobacco Free Kids	\$1,667
Community Health Partners, Inc.	\$800
Cooperative Health Center	\$500
Deaconese Billings Clinic	\$500
League of Women Voters of Montana	\$0
MHA - An Association of Montana Health Care Providers	\$3,175
Montana Business and Health Alliance -	\$1000
Montana Medical Benefit Plan	
Montana Chapter of the American Academy of Pediatrics	\$250
Montana Medical Association	\$3500
Montana Nurses Association	\$530
Montana Senior Citizens Association	\$50
Montana State Pharmaceutical Association	\$5000
Montana Taxpayers Association	\$0
Partnership Health Center, Inc.	\$500
Principal Life Insurance Company, Inc	\$1000
St. Joseph Hospital and Home Health	\$250
<b>Total</b>	<b>\$31,056</b>

Democrats, however, were immediately against Keenan’s Medicaid trust-fund proposal for two reasons. First, they expressed that the proposal would eliminate CI-82, which was in the signature gathering phase. Second, Democrats believed that if Keenan’s proposal passed, Republicans would divert state money usually used for Medicaid, replace it with MSA money, and then use the diverted money for non-health related programs, such as highways and tax relief.<sup>150</sup> Democrats wanted to safeguard CI-82 as well as maintain past levels of state contributions to Medicaid, and therefore intended to have Keenan’s proposal delayed until the 2001 regular session. Democrats explained that in the full 2001 Legislature, they would have more time to debate and consider proposed amendments. As a result of the negative reaction from Democrats, Keenan would quickly revise his proposal in the hope that it could gain broader support from both the House and Senate.<sup>150</sup>

In response to the opposition against his proposal, Keenan presented what he described as two complimentary bills - Senate Bill 12 and Senate Bill 13.<sup>151, 152</sup> Senate Bill 12 (SB 12) was the revised version of the Medicaid trust fund proposal, and would ask voters in the November 2000

election to amend the state constitution so that 40% of the MSA money be dedicated to the Medicaid program. Senate Bill 13 (SB 13) duplicated the CI-82 ballot measure exactly as the Alliance for a Healthy Montana had proposed it, dedicating 40% of the state's MSA money to a permanent trust fund, with the interest being used for health care and tobacco use prevention programs.<sup>151, 152</sup>

A hearing for both SB 12 and SB 13 was held before the Senate Finance and Claims Committee on May 10, 2000, with proponent testimony coming from member organizations of the AHM. No testimony was presented in opposition to either bill.<sup>153, 154</sup> Jim Ahrens, Executive Director of AHM, in supporting SB 12, stated that Medicaid funding was essential because health care facilities, such as hospitals and nursing homes, employed about 18,000 Montanans, with a yearly cost in wages of about \$500 million a year. Ahrens then testified in support of SB 13, and told the Senate Committee that the AHM would abandon its petition drive and devote its efforts to November passage of SB 13 if it was approved by the Legislature.<sup>151, 152</sup> Rose Hughes, Executive Director of the Montana Health Care Association, told the Senate Committee that her organization supported SB 12 because the state Medicaid programs had been underfunded for years and that medical facilities in Montana had not been adequately paid to provide care.<sup>151</sup> In support of SB 13, Hughes testified that her organization "would be happy not to be out on the streets with our petitions if [the legislature] go ahead and refer this directly to the people."<sup>151</sup>

In addition to the health groups, representatives from state agencies also expressed their support for SB 12 and SB 13. At the Senate Committee hearing for SB 13, Deputy Attorney General Beth Baker told the Senate Committee that the Montana Department of Justice was committed to the goals of reducing tobacco use and public health problems caused by smoking. Furthermore, Baker told the Senate Committee that Attorney General Mazurek had long supported allocations from the MSA for public health programs.<sup>154</sup> Attorney General Mazurek himself told reporters that the two bills "were critical components to address the [health care] goals of the settlement."<sup>152</sup>

Both SB 12 and SB 13 received unchallenged support throughout most of the legislative hearing process before facing a vote by the full House. On May 10, 2000, both SB 12 and SB 13 were approved by the Senate Finance and Claims Committee, both by a vote of 16 to 1. Each bill was then approved by the full Senate - SB 12 passed by a vote of 50 to 0, and SB 13 passed by a vote of 45 to 5.<sup>155, 156</sup> Both were referred to the House Human Services Committee for a hearing on the next day, May 11, 2000.<sup>151, 152, 155, 156</sup> Member organizations of the AHM again expressed their support before the House Committee, with no opposing testimony being offered.<sup>151, 152</sup> The House Committee approved both bills (SB 12 in a 16 to 0 vote, and SB 13 in a 16 to 2 vote), which were then sent to the full House for a vote.<sup>155, 156</sup>

Once the two bills reached the full House on May 11, 2000, SB 12 (the Medicaid trust proposal) would meet heavy resistance from representatives, while SB 13 (the duplicate of CI-82) would be approved. Though SB 12 had overwhelming support early in the hearing process, Democrat and Republican House members began to question the amount of money that would be tied up by both of the trust proposals. House Speaker John Mercer (R-Polson) told members that "[i]t would restrict the things the next Legislature could do."<sup>157</sup> House members felt the state could not afford to dedicate 80% of the MSA payments, leaving only 20% for the general fund,

because too little would be left for unpredictable cash needs in the next two years.<sup>157</sup> Thus, without strong backing from either the Democrats or Republicans, SB 12 was defeated in the House 74 to 24.<sup>155</sup> On the other hand, SB 13 had strong backing from Democratic legislators, the Republican Governor, the State Attorney General, and multiple state health groups.<sup>154</sup> Furthermore, the health groups had pushed their trust fund initiative into the media's attention during their original petition drive for CI-82. Thus, SB 13 was approved in the House by a vote of 69 to 24, and would be placed on the November 2000 ballot as Constitutional Amendment 35 (CA-35).<sup>156</sup>

In addition to strong support from Governor Racicot's administration and Democratic legislators, CA-35 proved to be popular with the electorate. Telephone polls conducted between May 22-24 by Mason-Dixon Polling and Research, Inc. of Washington, D.C. for the Lee Newspapers of Montana questioned 620 likely voters about all the initiatives on the ballot for the November 2000 election.<sup>158</sup> When asked about CA-35, 76% of the respondents said they supported the trust fund, 11% were opposed, and 13% were undecided. The poll's margin of error was 4%.<sup>158</sup> Voter support for CA-35 continued in the months leading to the November election. Another Mason-Dixon telephone poll conducted for Lee Newspapers between September 21-23 questioned 625 registered voters about November ballot initiatives. When asked about CA-35, 62% of the respondents supported the trust fund, 22% were opposed, and 16% were undecided.<sup>159</sup>

Newspaper coverage of CA-35 focused on the main proponent and sponsor of the initiative, Senator Bob Keenan, and Senator Ken Miller (R-Laurel), who became a vocal public opponent of the initiative (Senator Miller received a \$100 contribution from the R.J. Reynolds PAC during the 1998 election cycle<sup>160</sup> and received a \$50 contribution from tobacco industry lobbyist Jerome Anderson during the 1994 election cycle<sup>161</sup>) In addition to receiving financial contributions from the tobacco industry, a May 9, 2001 letter from Senator Miller to Roger Mozingo, Vice President for State Government Relations at R.J. Reynolds, demonstrates that a continuing relationship existed between Sen. Miller and R.J. Reynolds.<sup>81</sup> In the letter, Sen. Miller identifies himself as "Montana's State Public Chairman of ALEC (American Legislative Exchange Council)," a national advocacy group made up of conservative state lawmakers. The letter goes on to thank Mr. Mozingo for his support of ALEC, and asks for additional help for Montana's Scholarship Fund. Sen. Miller then invites Mr. Mozingo for further discussion on the matter:

If you would like to discuss further how your help could be beneficial to you and the people you represent, as well as Montana Legislators, or if you have any further question for me, I would love to hear from you.

If you can financially help Montana's Scholarship Fund, it will be greatly appreciated.

Thank you again for you participation in ALEC. I look forward to working with you in the future.<sup>81</sup>

Furthermore, on the letter were hand written notes indicating "Pay \$500," with the approval of Michael W. Phillips, Regional Director for R.J. Reynolds, who signed the handwritten notation "MW Philips 6/25/01."<sup>81</sup>

The *Helena Independent Record*, in an October 21, 2000 article, described Sen. Miller as leading the opposition to CA-35.<sup>162</sup> Sen. Miller's argued that the spending of MSA money would be better dealt with by the Legislature, and that the proposed trust-fund was too restrictive. Sen. Miller also stated that the trust fund "doesn't belong in the Constitution," and that he believed "it's so wrong that we keep muddying the Constitution with this kind of stuff."<sup>162</sup> Miller even expressed his disagreement with the practice of using litigation against tobacco companies to recover health related costs.<sup>162</sup>

Sen. Miller's opposition to CA-35 was also reported by the Associated Press in an October 23, 2000 article. In discussing the support given to CA-35 by multiple health groups, Sen. Miller said, "[o]f course they support it. It gives them a constant revenue source."<sup>163</sup> Sen. Miller added that "[t]his money should go to care for the best needs of the people. As to the health issues, we need to be able to spend that money now, partly to reimburse the taxpayers who've been footing those bills."<sup>163</sup> Sen. Miller's association with the tobacco industry was not mentioned in the articles reporting his opposition to CA-35.

Overall opposition to CA-35, however was not heavy, and the proponents were confident that the initiative would be passed by voters. Miller himself had tempered his personal opposition to it, telling the press that while he didn't think the trust fund was a great idea, it "wouldn't be the end of the world" if CA-35 was approved.<sup>162</sup> Sen. Keenan, who sponsored the initiative, did not seem very worried by the opposition's effect on voters, stating confidently that the proposed amendment was "a slam dunk," and "it's going to pass."<sup>162</sup>

The November 2000 election proved that Sen. Keenan's confidence in the voter's was well founded. The measure was overwhelmingly approved by a nearly 3-to-1 margin, 73% to 27%.<sup>164</sup> Despite this clear expression of voter will, however, it became apparent very quickly that the expenditure of tobacco settlement funds would still be a major point of political contention, especially in the incoming administration of Republican Governor Judy Martz, who replaced Racicot when term limits prevented him from running for re-election a third time.<sup>165</sup> Martz, who had served as Racicot's Lieutenant Governor from 1996 to 2000, was elected Governor of Montana on November 7, 2000. Even before Governor Elect Martz took office, it became clear she would not be the ally to health advocacy groups that Gov. Racicot had been.

## **GOVERNOR JUDY MARTZ AND THE DISMANTLING OF THE TOBACCO USE PREVENTION PROGRAM**

According to reports by the Associated Press and the *Helena Independent Record* on December 30, 2000, Chuck Swysgood, Budget Director for Governor-elect Judy Martz (R), told outgoing Attorney General Mazurek that the \$3.6 million that was supposed to go into the health care trust fund under CA-35 was instead going into the state's general fund.<sup>166, 167</sup> The first MSA payment of \$9 million was to arrive at the beginning of the 2001, but the tobacco companies, looking for a tax break, wanted to send the payment before the year's end. Since the payment of \$3.6 million would have come in before the January 1, 2001 start date of the trust, Martz could have deposited the payment into the general fund rather than the trust. Thus, payment into the trust would have been subject to available money in the general fund, alongside all other program funding that normally came out of the general fund.<sup>166, 167</sup>

Mazurek explained to reporters that upon learning about Martz' plan to divert the money into the general fund, "I tried to persuade the budget office that they really shouldn't do that," and that, "I think everybody expected that the money would go to the trust."<sup>167</sup> When Mazurek found out that none of the money would be going into the trust, he contacted Gov. Racicot, who wrote a letter to the tobacco companies asking that the entire \$9 million be held the start of the new year and of the trust fund. Thus, Mazurek and Racicot blocked Martz from raiding the trust. Mazurek told reporter's "Marc's still the governor, he made the call," and that, "frankly this was the right thing to do."<sup>167</sup>

Lieutenant Governor Martz gave no sign to reporters of disagreement over Gov. Raciot's blocking her attempts to divert trust fund money, saying that "they can do what they need to do, and we'll do what we need to do."<sup>167</sup> Martz also claimed to reporters that she supported the trust fund, but was facing an unexpectedly tight budget as she prepared to take office,<sup>166, 167</sup> a common argument used by pro-tobacco industry government officials as an excuse for pro-tobacco industry policy decisions.<sup>7, 10</sup> Gov-elect Martz had already announced \$43 million in proposed cuts from spending increases that Racicot proposed in his final budget proposal, and she had dropped plans for \$20 million in tax cuts that she promised in her campaign.<sup>166</sup>

Also during that final week of December 2000, Governor-elect Martz announced her plan to recommend that the legislature cut the Tobacco Use Prevention Program budget to \$1 million for the 2002-2003 biennium, a \$6 million reduction from the \$7 million 2000-2001 biennium budget proposed by outgoing Gov. Marc Racicot.<sup>168</sup> The actions taken by Martz made anti-tobacco advocates both nervous and angry.<sup>167, 168</sup> Kristin Page Nei, Director of State Government Relations for the American Cancer Society, told reporters that she had written a letter to Martz to protest the \$6 million cut from the Tobacco Use Prevention budget. Both the budget cut and the letter were then widely reported by local newspapers.<sup>167, 168</sup> Martz told reporters that she was offended that the health groups would criticize her without talking with her first: "I don't think this is any way of starting a relationship."<sup>166</sup> In response, Nei told reporters that the new governor shouldn't be surprised by the health groups' criticisms, especially when it comes to tobacco settlement funds. Nei stated, "Our job is to be watchdogs of this money," and that, "we're going to be watchdogs and be critical if it's not used in the appropriate manner."<sup>167</sup>

Gov. Martz' attitude toward the state health groups continued to be antagonistic during the first days of her administration in 2001. As described by Dick Paulsen, Executive Director of the American Lung Association of the Northern Rockies, the relationship between the health groups and Gov. Martz

went very poorly. There were headlines where the tobacco [control] advocates were sparring... with the governor when in fact some of the health groups were not sparring with the governor, we were looking forward to working with [the new administration]... She thought the health groups were going after her personally and I was one that said that's not the case.<sup>96</sup>

The poor relationship between health groups and the governor was exemplified at a January 10, 2001 meeting with officials from state branches of the American Heart Association (AHA), American Lung Association (ALA), and American Cancer Society (ACS). Gov. Martz chastised the groups for failing to meet with her before publicly airing concerns about her tobacco-related policy decisions.<sup>168</sup> Nei of the AHA countered that she had sent a letter to Martz



and tried unsuccessfully several times to set up meetings with the governor before going public. Nei apologized for any misunderstanding, telling Martz, "I don't have any intention of trying to make this a contentious relationship."<sup>168</sup> Martz responded that "[i]t already is contentious. We can work from here and work out of it," adding, "I can forgive you for what you've done but I would ask that you please don't do it again."<sup>168</sup>

The discussions at the January 10, 2001 meeting, however, remained heated, with health advocates continuing to urge Martz to reconsider her position on Tobacco Use Prevention spending. In describing the meeting with the Governor, Dr. Robert Shepard said:

We were asked to prove that the program worked. We pulled out data from five other states, all demonstrating a reduction in tobacco use of as much as 40 packs per person per year in California. More importantly, the demonstrable decrease in disease: California has had a notable decrease in cancer and heart disease. We pointed out how we had crafted our program after these successful examples

I will never forget the look on [the health advocates'] faces, as I was asked, "But show me the data this works in Montana." Of course, there is no data yet in Montana. This program had only been operational six to nine months... [To which the Governor replied] "You were told we would take this money back if you couldn't prove this program works." Oh, but of course.

We were told, "advertising doesn't work," despite direct evidence to the contrary on the effectiveness of anti-tobacco advertising, and despite the obvious success of advertising by the tobacco industry.<sup>131</sup>

Despite arguments made by the health groups, Gov. Martz continued to state that she did not believe in the effectiveness of the Tobacco Use Prevention Program (TUPP), saying "I want to see some results," and that the state was "throwing good money away." Cliff Christian, a lobbyist for the American Heart Association, responded that it would be irresponsible to dismiss a program before it was given a chance to work.<sup>168</sup>

Dr. Shepard, along with C.B. Pearson (representing Campaign for Tobacco Free Kids), also pointed to a possible tobacco-tax increase as a way to solve the state's budget deficit, which would also serve as a positive step for public health policy since it would reduce smoking in the state. Pearson explained that the health groups would not be concerned with cigarette tax money going towards financing other government programs, since the tax itself would decrease tobacco use.<sup>168</sup> Gov. Martz told the health groups that she did not believe in taxing unhealthy behavior as the way to prevent it.<sup>168</sup> The idea for an increased cigarette tax would later return as a successful health group initiative in 2004. Furthermore, although the state's tobacco use prevention program had not yet recorded results in 2001, information released 4 years later in the "Montana Tobacco Use Prevention Plan" showed that youth tobacco use from 1999 to 2003 had decreased from 23% to 13% among students in grades seven and eight, and from 35% to 23% among high school students.<sup>4</sup>

### ***Governor Martz' Recommendation to Reduce the Tobacco Prevention Budget Goes to the Legislature***

Since Gov. Racicot was firm in her recommendation to drastically reduce the TUPP 2002-2003 biennium budget to \$1 million (or \$500,000 per year), it was thus left to the 2001 State Legislature to decide whether to accept her recommendation. Since there had not yet been any interest income from the voter-approved trust fund (the trust fund only received MSA money after January 1, 2001), the prevention program needed to be funded from other sources. The 2001 Legislature would also have to decide how to spend the remaining 60% of MSA money that wasn't secured in the trust fund.<sup>169</sup> Gov. Martz' budget proposal would first go to the Joint Appropriations Subcommittee on Health and Human Services, which is initially responsible for health-care expenditures. Sen. Dave Lewis (R-Helena), chairman of the subcommittee, made early indications that some skepticism existed over the effectiveness of the tobacco-prevention program: "I just want to see a lot of really hard evidence that we're getting something, . . . If it works, grand."<sup>169</sup> Such results-oriented demands on tobacco prevention programs were common tobacco industry rhetoric<sup>170</sup> and, in actuality, political factors have a greater influence than program results in determining tobacco control appropriations.<sup>133</sup>

The policy argument between the health groups and the governor continued to be covered in newspaper reports. Martz repeated to reporters that, though she supported tobacco prevention, the state budget was too tight for the state to spend money on unproven efforts.<sup>169</sup> Health advocates, in response, continued to tell reporters that the tobacco use prevention program had not been given enough time to show results, and that other states with similar plans had been able to curb smoking.<sup>169</sup>

At the January 30, 2001 hearing before the Joint Appropriations Subcommittee on Health and Human Services, 12 individuals testified against Gov. Martz' proposal to reduce the TUPP budget, including representatives from Governor's Advisory Council on Tobacco Use Prevention and health advocacy groups (Table 17). No public testimony was given in support of Gov. Martz' decreased budget proposal.<sup>171</sup> Dr. Sargent testified that smoking related diseases cost Montana more than \$150 million a year, plus \$12 million in direct costs to the Medicaid program, and that Montana smokers spend an estimated \$190 million per year on cigarettes.<sup>172</sup> Joan Miles, director of Lewis and Clark City-County Health Department and member of the Governor's Advisory Board, reminded the committee that the MSA money was in the state because Montanans had died and suffered from tobacco use.<sup>172</sup>

The next Joint Appropriations Committee on Health and Human Services hearing regarding the TUPP budget occurred on February 1, 2001, where Committee Chairman Rep. Dave Lewis (R - Helena) (who had received \$475 in tobacco industry contributions since 2000) told the Committee that if Gov. Martz' recommendation was not accepted, the state budget would be short by \$6 million. Lewis further stated that under the Governor's recommendation, there would be \$1 million in the state general fund for the TUPP program in the biennium, plus \$870,000 per year from the CDC.<sup>173</sup> Rep. Joey Jane (D-Arlee) attempted to push forward a substitute motion for a \$9 million biennium budget (based on CDC recommendations), but the motion was defeated on party lines, with 4 Republicans voting against and 2 Democrats voting in

favor. Gov. Martz proposed budget was then approved by the committee by a vote of 4 to 2, also on party lines.<sup>173, 174</sup>

**Table 17: List of Individuals Testifying Against Gov. Martz' Proposed Reduction of the Tobacco Use Prevention Budget (TUPP), Jan. 30, 2001.**<sup>171</sup>

Jeri Domme, Member of the Governor's Advisory Council on Tobacco Use Prevention, representing the American Heart Association.  
Dr. Richard Sargent, Chairman of the Helena Health Alliance.  
Joan Miles, Member of the Governor's Advisory Council on Tobacco Use Prevention representing County Health Officers, and the Director of the Lewis and Clark County Health Department.  
Linda Stoll, Montana Local Health Officers Group.  
Cliff Christian, American Heart Association.  
Janie McCall, Deaconess Billings Clinic.  
Vernon Bertelsen, Member of the Governor's Advisory Council on Tobacco Use Prevention, representing Montana's Senior Citizens.  
Jill Flynn, an elementary counselor.  
Paul Fitzgerald, a former smoker.  
Elizabeth Andrews, representing the Chief Joseph Middle School Breakfast Club.  
Jim Ahrens, Chairman of the Alliance for a Healthy Montana.  
Michael Huntley, registered nurse.  
Linda Lee, Member of the Governor's Advisory Council on Tobacco Use Prevention, representing the Campaign for Tobacco Free Kids.

After the Joint Appropriations Committee approved the reduced budget at the February 1, 2001 hearing, Sen. John Cobb (R-Augusta), Vice Chairman of the Committee, moved to put forward a committee bill that would take money from the voter-approved MSA health-care trust-fund in order to increase the budget of the TUPP program.<sup>173</sup> Sen. Cobb explained that he did not want to cut the existing program, reasoning that the program might fall by the wayside without money from the trust fund.<sup>174</sup> Both Democrats (Rep. Jane and Sen. Waterman) on the committee blocked the motion (a committee bill requires 5 affirmative votes), arguing that it would be a violation of the public trust to so quickly "bust the trust" that was only recently approved by the voters.<sup>174</sup> Sen. Mignon Waterman (D-Helena) stated, "I think this is real disingenuous," and noted that, "the people of Montana spoke three months ago." Waterman added, "it's a tight budget, but I'm not ready to bust the trust."<sup>174</sup> The health groups would now have to continue their pursuit for funding as Martz' budget proposal moved forward in the legislature.

During the last month of February, health groups tried to reach legislators by purchasing a billboard advertisement that sent a message directly to them. The billboard (paid for by the Montana Medical Association, the Montana Hospital Association, the Montana Nurses Association, and the American Lung Association for approximately \$425 per month) stated, "Legislators: the tobacco settlement money is for health care. PLEASE DON'T DIVERT IT."<sup>175</sup> G. Brian Zin, Executive Vice President of the Montana Medical Association, told reporters that it was the first time the Montana Medical Association had lobbied through a billboard, and that is was put in a prime location where people continually saw the message and were reminded about the issue.<sup>175</sup> It is also likely that newspaper coverage of the billboard spread its message to a wider audience, though it seemed to have little effect on the next budget hearing before the House Committee on Appropriations.

At the March 5, 2001 hearing before the House Committee on Appropriations, Rep. Christine Kaufman (D-Helena) moved to restore the \$6 million to the TUPP that was being cut under Martz' proposed budget.<sup>176</sup> Kaufman asserted that Montanans had expressed a desire for MSA money to be spent on tobacco prevention by voting for the MSA health trust, and Rep. Rosalie Buzzas (D-Missoula) expressed her support for the motion. In supporting Gov. Martz' proposed budget, Committee Vice-Chair Rep. Dave Lewis (R) countered that money was scarce, and that the tobacco prevention program would still have federal funds of \$1 million in addition to the \$500,000 per year from the MSA. Lewis argued that the reduced TUPP budget would allow the state to maintain other worthwhile programs, stating "it's simply a matter of priorities."<sup>177</sup>

Montana residents, anti-tobacco groups, and the health organizations continued their efforts to convince the legislators to maintain prior funding levels for tobacco prevention programs. On March 7, 2001, about 200 people converged on the Capitol to urge the 2001 Legislature to add money to the state's Tobacco Use Prevention Program proposed budget.<sup>178</sup> The *Helena Independent Record* reported that "to drive their message home, supporters of the program... filled the Capitol with 1,400 daffodils, four to a vase. The total represents the number of people who die each year in Montana of tobacco-related illnesses; the distribution stands for the four people who die each day."<sup>178</sup> The article also reported that "[o]n placards standing around the rotunda down the hall from the governor's office, several dozen Montanans posted messages on what rally organizers called the 'Wall of Hope.'"<sup>178</sup>

Health advocates continued to make their arguments to reporters covering the March 7, 2001 rally. Jeri Domme, a member of the Governor's Advisory Council representing the American Heart Association, explained that reduction of the TUPP budget by more than 80% would essentially eliminate the program. Dr. Shepard, Advisory Council member representing the American Lung Association, criticized the elected officials who failed to support tobacco prevention, asking, "How big does the number have to be before we get people's attention?" and "how much money does it have to cost?"<sup>178</sup> In response the criticisms made by rally attendees, Mary Jo Fox, Communications Director for the Governor, told reporters that Gov. Martz had not changed her mind about funding the prevention program at \$500,000 a year. Fox asserted that tobacco prevention was a low priority in a fiscally tight period, saying "in a year where funds are scarce, choices have to be made," and that though she thought tobacco prevention was a good program, "we don't have funds for it at this time."<sup>178</sup>

Local news continued to report the criticisms made by health advocates about Gov. Martz' handling of the tobacco use prevention budget. In an April 3, 2003 article by the Associated Press, Dr. Robert Shepard, stated that the state officials "have failed to address the leading cause of preventable death in Montana," and that "for this program to be cut by 86% is outrageous."<sup>179</sup> The article also quoted Joan Miles, Director of Lewis and Clark County Health Department, who said that "...it would be disgraceful if we would accept tobacco settlement dollars without appropriating some of them to preventing disease and death."<sup>180, 181</sup> The Associated Press story was carried by state newspapers, the *Helena Independent Record* and the *Billings Gazette*.<sup>180, 181</sup>

Gov. Martz' office responded to the health advocates' criticisms through a statement to the press. The administration's statement said that Martz had made her position clear in January: "Tobacco use prevention is a worthy cause, but will have to make due with \$1 million [for the 2002-2003 biennium] in tight fiscal times."<sup>180, 181</sup> The Governor's press secretary, Anastasia Burton, reiterated the claim to reporters that the governor believed in the tobacco use prevention program.<sup>179</sup> The Governor's claims of believing in tobacco use prevention program, however, were inconsistent to previous statements, in which she told the Governor's Advisory Council on Tobacco Use Prevention that she was reducing prevention funds because the program lacked results. The Governor's statement also said that the reduced budget was based on her belief that \$1 million was adequate to get the job done, even though all state officials involved with the TUPP believed that the program might be eliminated due to her funding proposals.<sup>179</sup> Indeed, Drew Dawson, Chief of the Health Systems Bureau of the DPHHS which directly oversaw the tobacco-use prevention program, stated in February 2001 that it was unclear what the department could accomplish with such a dramatic reduction in funding.<sup>182</sup>

State health advocates held a press conference in Helena on April 9, 2001 to continue their public criticisms of Martz' proposed tobacco prevention budget cuts, as well the support Republican legislators had given to the cuts. At the press conference, representatives from the American Heart Association, American Cancer Society, and the Campaign for Tobacco Free Kids made public statements around a table topped by 4 body bags, symbolizing the 4 people each day that die in Montana from tobacco-related illness.<sup>183</sup> American Heart Association Lobbyist Cliff Christians stated that the Governor and Legislature were failing to adequately support tobacco use prevention, but that there was still time to increase proposed funding for the TUPP.<sup>183</sup> Kristen Page Nei with the American Cancer Society called the administrations budget constraints argument "hogwash" and "downright insulting."<sup>183</sup> Nei pointed out that the 60% of the MSA money not dedicated to the trust fund was in the state for the purpose of addressing tobacco use prevention, and was "not intended to balance the budget."<sup>183</sup>

Gov. Martz met with the Governor's Advisory Council on Tobacco Use Prevention on April 12, 2001. During the 40 minute meeting, Gov. Martz told the Advisory Council "I don't want to argue with you. I believe in what you're doing," and that "I believe in the programs, I just don't have the money."<sup>184</sup> Again, the Governor contradicted assertions made earlier in the year that she did not believe the programs worked. Members of the Advisory Council repeated arguments they had been making since December 2000: that the program was not given enough time to show results, that tobacco related illness was a major health danger, and that cutting the TUPP budget by \$6 million would effectively eliminate the program. Gov. Martz, now claiming she wholeheartedly believed in tobacco prevention, responded by putting all of the blame on a budget constraints: "I believe every word your saying. I can understand why you're so adamant about it... I'm not heartless. I'm not a cold blooded person. But I have a whole state to find an ending fund balance for."<sup>184</sup>

Advisory Council members at the April 12, 2001 meeting also repeated the suggestion that the state could raise money as well as reduce the smoking rate by raising the tax on cigarettes. Martz rejected the idea, reasserting her pledge not to raise any taxes.<sup>184</sup> Martz did offer to help the council find additional money in the private sector, but made clear that unless the state discovered new revenue, tobacco-use prevention spending would not be increased.

## ***Tobacco Use Prevention Program is Placed Under the Supervision of the Governor's Office***

Already at risk of elimination from drastically reduced funding, the Tobacco Use Prevention Program was further weakened on April 18, 2001, when Senate Finance Chairman Robert Keenan (R-Bigfork) (who received a \$100 campaign contribution from R.J. Reynolds in 1998<sup>160</sup>) moved that the House-Senate Conference Committee transfer the entire program and its funding out of the Department of Health and Human Services (DPHSS) and into the Montana Interagency Coordinating Council for State Prevention Programs (ICC).<sup>185</sup> The ICC was physically housed in the DPHSS, but was administratively attached to the governor's office, which would directly supervise its members. The ICC was created by Legislative statute in 1993 for the purpose of creating and sustaining a comprehensive system of prevention services in the state of Montana. The ICC was comprised of ten Montana state agency directors, the Lieutenant Governor, and two persons appointed by the Governor who had experience in prevention programs and services.<sup>186</sup> Among the goals of the ICC were to reduce the rates of child abuse, drug abuse, high school drop-outs, violent crime, and teen pregnancy in the state.<sup>187</sup>

On April 18, 2001, the House-Senate Conference Committee voted unanimously to move the \$1 million in state funds and about \$2 million more in federal disease-prevention money from the fledgling Tobacco Use Prevention Program in the DPHSS, and into the Gov. Martz controlled ICC. Senate Finance Chairman Keenan, in explaining his motion to move the program, reasoned that the governor's office already had vast resources to tackle prevention efforts, and he believed that government prevention programs were being duplicated.<sup>185</sup> The day after the House-Senate Conference Committee vote, on April 19, 2001, the *Helena Independent Record* observed that this likely meant the elimination of a long effort by public health advocates for a fully funded, separate and high-profile anti-tobacco campaign in the state.<sup>188</sup> To the surprise of the state health advocates, tobacco use prevention efforts would now be one of the several programs run through the ICC; in addition, the reduced budget for tobacco prevention was approved by the legislature on April 21, 2001.<sup>189</sup>

Shortly after the Legislature restructured the state tobacco prevention programs, it was announced that Gov. Martz might let the Governor's Advisory Council on Tobacco Use Prevention sunset after its two-year term ended in September 2001.<sup>190</sup> Although the administration claimed to reporters on April 24, 2001 that it had not made a final decision on the Advisory Council's fate, Ken Pekoc, a public information officer for the DPHHS, told reporters that his department had prepared a draft letter informing members of the demise of the Advisory Council. According to Pekoc, the letter was then changed on April 24, 2001 into a list of pros and cons regarding the council that was released to the public.<sup>190</sup> Mary Jo Fox, Communication Director for the Governor, denied that she or the Governor had seen the letter, and claimed that the Governor was awaiting a recommendation from DPHSS Director Gail Gray before making a decision about the council.<sup>190</sup> It was reported in an April 24, 2001 *Helena Independent Record* article that Gray herself had not yet made a recommendation to the governor, though she was likely to suggest eliminating the Advisory Council because of reduced funding and restructuring. The DPHHS Director made no comment on the draft letter informing of the Council's demise, which was allegedly prepared by her own department.<sup>190</sup>

Communications Director Fox claimed that the Governor was not looking for retribution against Council members who criticized her actions, but was reacting to the Legislature's wishes regarding the program funds and structures. Such a justification contradicted the history of the conflict between Martz and health advocates, however, since it was Martz herself who originally recommended reducing the Tobacco Use Prevention Program budget.<sup>190</sup> Council members said they were not surprised by the Governor's decision. In reaction, Dr. Shepard told reporters that, "it is not a reasonable approach to throw out the expertise of 24 volunteer members who have been working hard on this program,"<sup>190</sup> Dr. John Hauxwell, another member of the Advisory Council who represented the Indian Health Service, told the press that the council was being eliminated because "[w]e were a burr under [Gov. Martz'] saddle reminding her that she was backing away from what's essentially a public health crisis."<sup>190</sup>

Though the contentious relationship between anti-tobacco advocates and Gov. Martz was well known and widely reported by the local press, it should also be noted that conflicts with Gov. Martz were not exclusive to tobacco control advocates. On April 25, 2001, the Center of Environment Politics (CEP), a Montana-based political watchdog group established in 1998, held a news conference on the steps of the state Capitol to criticize Gov. Martz' administration.<sup>191</sup> The CEP charged that the first 100 days of Gov. Martz' administration were marked by a lack of openness, inclusiveness and accountability, though the governor's spokeswoman dismissed the criticism as little more than a rally hosted by the Montana Democratic Party.<sup>191</sup> Dori Gilels, spokesman for the CEP, stated that "in her first 100 days, Gov. Martz has rolled back key environmental protection laws, paving the way for out-of-state industries to exploit Montana's resources at the expense of our communities and quality of life."<sup>191</sup>

Also at the Center for Environmental Politics news conference on April 25, 2001, former Republican Secretary of State Verner Bertelsen, who represented Montana's senior citizens on the Governor's Advisory Council on Tobacco Use Prevention, continued criticisms of Gov. Martz' attitude towards the TUPP. Bertelsen told the press that "the actions of Gov. Martz show disregard for public support of this very important program," and that the administration "show a clear and blatant departure from her commitment to prevention efforts."<sup>191</sup> Anastasia Burton, Press Secretary for the Governor's office, responded to the criticism by stating that Gov. Martz' actions were simply a response to the demands of the Legislature.<sup>191</sup> However, the administration again failed to mention that it was Gov. Martz who originally proposed reducing the tobacco prevention budget and claimed that the program was ineffective.

Public opinion regarding the tobacco use prevention programs also appeared to support the state health advocates. A poll conducted for Lee Newspapers of Montana by Mason-Dixon Polling and Research Inc. of Washington D.C. between April 30 and May 2, 2001 showed that, out of 625 registered voters questioned, 79% disapproved of the decision to reduce funding for the state's tobacco-use prevention program, 14% approved of it, and 7% were undecided (the margin of error for the poll was 4%).<sup>192</sup>

### ***Tobacco Use Prevention Constrained After Martz Dismantles Program***

In June 2001, the *Helena Independent Record* reported that the Tobacco Use Prevention Program had been scaled back considerably after Gov. Martz and the Legislature cut \$6 million

from its budget (Table 18). The program had \$2.75 million for the 2002-2003 biennium (\$1 million from the state and \$1.75 million from the CDC).<sup>134</sup> The focus of the program would be funding communities, with about two thirds of the prevention program’s budget going to contracts run by county and tribal governments. The number of county contracts awarded by the TUPP was reduced from 40 to 27, and the number of tribal contracts was reduced from 12 to 7. In addition, the state Quitline would be eliminated, as would the media campaign by the Banik Creative Group.<sup>134</sup> The “Most of Us Campaign” would continue only with \$150,000 funding from the CDC, but would have to scale back its target counties from 7 to 3 (Missoula, Ravalli, and Lake).<sup>134</sup>

<u>KEY TOBACCO PREVENTION PROGRAM ELEMENTS</u>	<u>Two Year State Funding in 2001-2002 Biennium (millions)</u>	<u>Two Year State Funding in 2002-2003 Biennium (millions)</u>	<u>One Year CDC Recommended Program Budgets (millions)</u>
Community-based Programs	\$2.63	\$0.85	\$1.47 - \$2.96
School Based Programs	\$0.97	\$0.06	\$1.20 - \$1.80
Media/Public Awareness/Counter Marketing	\$1.76	\$0.00	\$0.88 - \$2.64
Cessation Programs	\$0.91	\$0.00	\$0.92-\$3.66
Surveillance & Monitoring	\$0.19	\$0.04	\$0.81-\$1.72
Administration Planning, Staff	\$0.53	\$0.05	\$0.41-\$0.86
Chronic Disease Programs	\$0.00	\$0.00	\$2.79-\$4.17
Enforcement	\$0.00	\$0.00	\$0.53-\$1.01
Statewide Programs	\$0.00	\$0.00	\$0.35-\$0.88
TWO YEAR TOTAL	\$7.00 (\$3.5 per year)	\$1.0 (\$0.05 per year)	CDC RECOMMENDED BUDGET RANGE FOR ONE YEAR: \$9.36-\$19.68
Program Staffing	7 Full Time Employees	4 Full Time Employees	

In a 2005 interview, Georgiana Gulden, Supervisor of the Tobacco Prevention Center at the DPHHS, stated that the TUPP changes were a result of both reduced funding and political pressures coming from Gov. Martz’ office :

...with the changes in the program under Governor Martz’ administration, politically in order to survive, we pretty much had to... eliminate the media an all those other pieces that go along with it, including surveillance evaluation and everything... that’s what started us down the road of our main focus being on communities... we were pretty limited in what we could get [the tobacco use prevention programs] to do as well because we couldn’t get them to do anything controversial,



hard-hitting, anything like that. So they focused a lot of their efforts on working with the youth in schools... It was a feel good thing... And we worked with [the local programs] as much as we could to continue some education with them, knowing that they wouldn't be able to do a lot of the hard-hitting stuff but knowing eventually we would be getting a new governor and hopefully some funding and be able to rebuild.<sup>126</sup>

### ***Aftermath of Gov. Martz' Tobacco Use Prevention Program Cuts***

The Governor's Advisory Council on Tobacco Use Prevention was allowed to sunset in September of 2001. In that same month, Dr. Shepard was given the President's Award from the Montana Public Health Association. At the awards ceremony in Billings on September 12, 2001, Dr. Shepard's entire acceptance speech was a criticism of Gov. Martz treatment of state tobacco use prevention efforts, which drew a standing ovation from the audience.<sup>131</sup>

In his acceptance speech, Dr. Shepard recounted the major budget cuts and political constraints Gov. Martz made on the state's tobacco use prevention program:

And what are we going to say if the program is unsuccessful? In the face of what we have been through, will we really be able to point out the truth - That the program was gutted to failure? Or will we face the "We told you it wouldn't work" - the unfunded self-fulfilling prophesy?

What happened was not a program failure. It is not a failure of effort. It is not even a failure of financing, because the dollars were there...

...The intellectual impoverishment of this administration is frightening.

What happened was a failure of leadership. We, the voters of Montana, should hold them accountable.<sup>131</sup>

In January 2002, a report by the Campaign for Tobacco-Free Kids (TFK) in Washington D.C. reported that only seven states had done a worse job than Montana in using MSA money. According to the report, Montana had spent only 5.3 percent (about \$500,000) of the minimum annual amount recommended by the Centers for Disease Control and Prevention (about \$9.36 million) in order to run effective, comprehensive programs. TFK also labeled Montana one of the country's most disappointing states for a reduction in its tobacco control funding that year, and dropped the state's national ranking from 24th to 43rd.<sup>194</sup> "By failing to adequately fund tobacco prevention, Gov. Martz and the Legislature have let down Montana's kids and taxpayers, said William Corr, executive vice president of the TFK.<sup>194</sup>

Despite the many setbacks for tobacco control advocacy groups, they moved forward with their mission of tobacco-use reduction and prevention. On February 13, 2002, a coalition of the American Cancer Society, the American Heart Association, and the American Lung Association held a news conference to launch an advertising campaign aimed at boosting Montana's efforts to prevent cigarette smoking and tobacco use among young people. The campaign project, titled ProtectMontanaKids.Org (PMK), was funded with \$249,000 in private grants through the SmokeLess States National Tobacco Policy Initiative, a private sector collaborative effort by the Robert Wood Johnson Foundation and the American Medical Association that supports statewide tobacco control coalitions through grants. The PMK coalition was intended to form strategic alliances on an as needed basis around different tobacco

control efforts, and would join with other partners or coalitions (such as the Alliance for a Healthy Montana, the Montana Medical Association, and the AARP) when beneficial to tobacco control goals.

The newly launched PMK campaign started running advertisements in the first week of February 2002. PMK developed six advertisements for print, radio, and television mediums. One television ad featured a widow whose husband, a non-smoker who worked in a smoker heavy environment, died of lung cancer at the age of 47. All of the ads directed people to the PMK web site for more information. The campaign web site urged more state funding of tobacco-prevention programs and higher state taxes on tobacco products. The website also included statistics showing that an increase in state cigarette taxes could prevent 8,900 kids from smoking, lead 8,100 adults to quit, and create \$60.6 million in state revenue.<sup>195, 196</sup>(though the PMK website is no longer maintained or accessible). Former Attorney General Joe Mazurek, who had gone into private practice in Helena in February 2002, spoke at the coalition news conference in support of the campaign and explained that the effort was partly in response to the 2001 Legislature's slashing of state funded tobacco prevention programs.<sup>195</sup>

## **GOVERNOR MARTZ' RELATIONSHIP WITH THE TOBACCO INDUSTRY**

The justification given by Governor Martz for her approach towards state tobacco prevention efforts is put into doubt when examining her ties to the tobacco industry and its lobbyists. Among the publicly known financial and political connections between Gov. Martz and the tobacco industry were her fund raising efforts for a tobacco industry supported political fund, her close relationship with tobacco industry state lobbyists, and the direct contributions made to her campaign by the tobacco industry.

### ***The Montana Majority Fund***

On February 23, 2002, the Associated Press and the *Helena Independent Record* reported that Gov. Martz helped to raise thousands of dollars from several industry sources, including the tobacco industry, for a Republican committee that planned to financially support state and national campaigns. The political fund, called the Montana Majority Fund, was created under section 527 of the Internal Revenue Service code, and was a tax-exempt political organization that could raise money but was not subject to reporting rules by the Federal Elections Commission. The Fund intended to finance issue-based advertising rather than direct campaign contributions, because under Montana campaign finance law corporate funds could not be used to directly campaign for or against a candidate. These types of political groups are commonly referred to as "Stealth PACs" (Political Action Committees).<sup>197-199</sup>

The Montana Majority Fund, created in May 2001, was run by close political associates of Governor Martz. Governor Martz herself served as the honorary chairperson of the Majority Fund, which was set up by Mark Baker, President of the Majority Fund and legal partner of Jerome Anderson in the Anderson & Baker law firm. Mark Baker was also a trusted political advisor to Gov. Martz and the registered state lobbyist for U.S. Tobacco (2001) and the Smokeless Tobacco Council (1999), among other large companies.<sup>200</sup> Baker's law partner, Jerome Anderson, was the state lobbyist for R.J. Reynolds (as well as other large companies) and

had represented tobacco industry interests since the 1970s.<sup>201</sup> Finally, the Fund’s Executive Director, Shane Hedges, was a former policy advisor to Martz who had pleaded guilty to negligent homicide stemming from a drunk driving crash that killed House Majority Leader Paul Sliter (R-Somers) in August 2001.<sup>198</sup>

At the request of the *Helena Independent Record*, Montana Majority Fund President Mark Baker turned over the Fund’s IRS documents, filed January 24, 2002, which listed its corporate contributors. Although the documents reportedly did not list dates of the received contributions, the *Helena Independent Record* did publish the source and amounts of corporate contributions during the Fund’s first year, including \$25,000 in contributions made by the tobacco industry (Table 19). The Majority Fund raised a total of nearly \$200,000 in its first year. Gov. Martz hosted at least two fund raising events for the Majority Fund, one at a Palm Springs, California golf club in 2001 and another in Salt Lake City, Utah, during the 2002 Winter Olympics.<sup>198, 202</sup>

<b>Table 19 : Contributions Made to Montana Majority Fund in its First Year from the Tobacco Industry<sup>202</sup></b>	
<b>CONTRIBUTOR</b>	<b>AMOUNT</b>
Philip Morris Management Co., NY	\$10,000
U.S. Tobacco Co, Greenwich, CT	\$5,000
Smokeless Tobacco Council, Inc., Washington D.C.	\$5,000
R.J. Reynolds, NC	\$5,000
<b>Total</b>	<b>\$25,000</b>

Democrats attacked the Montana Majority Fund (MMF), describing its corporate contributions as evidence that Gov. Martz’ administration policies were being bought and sold. Senate Minority Leader Steve Doherty (D-Great Falls) called the MMF “a slush fund with no accountability that takes advantage of loopholes [in campaign finance laws].”<sup>203</sup> A Helena campaign finance lawyer, Jonathan Motl, had reviewed the MMF’s records, and stated that “[t]here are 20 very powerful entities giving about \$10,000 each and that money is being used to engage mostly out-of-state ad agencies, printing companies, photographers,” and added that “[a]nytime you have a group of powerful entities... and then you have the money placed in the hands of extremely partisan politicians, the money’s going to be used in a political way.”<sup>203</sup> The Republican leadership of the Montana Majority Fund defended themselves by characterizing the fund as a non-partisan organization. Mark Baker said the Fund was non-political and Democrats were welcome to participate.<sup>198</sup> Gov. Martz stated to the press that she had no involvement with the group’s daily operations.<sup>204</sup>

The MMF would not survive the political attack against it. In March 2002, Gov. Martz resigned as honorary chairwoman of the Fund, and Mark Baker stated in an Associated Press article that “I’ve ceased any activity with the Montana Majority Fund at this point...”<sup>205</sup>

***Governor Martz’ Ties to the Tobacco Industry and Tobacco Industry Lobbyists***

During Gov. Martz’ campaign for Governor in 2000, she received campaign contributions directly from tobacco companies, as well as from tobacco industry lobbyists (Table 20). The amount of the financial contributions from the tobacco industry become more meaningful given that the 2000 gubernatorial was close. As late as November 5, 2000, the Sunday before the election, all survey polls measuring the race between Martz and Mark O’Keefe, her Democratic opponent, were within the margin of error or close to it.<sup>206</sup> Thus, the contributions made by tobacco companies and their lobbyists were very valuable (though the Commissioner of Political Practices Report for 2000 does not list the dates of contributions made to Martz’ campaign). As described by Dr. Richard Sargent in a 2005 interview:

She [Martz] was in a big campaign with a very wealthy man here in Montana, Mark O’Keefe. And she came down to the last couple of weeks of her campaign and was basically out of money. And at the time, Jerome Anderson and Mark Baker went out and raised a whole bunch of funds for her right at the last minute, basically bought her campaign new life and she was able to come back and win. Well, Jerome Anderson is a R.J. Reynolds lobbyist and Mark Baker works for... Smokeless Tobacco.

And they became her chief political advisors.<sup>125</sup>

In addition to the tobacco companies, Philip Morris and R.J. Reynolds, listed as contributors to Judy Martz’ 2000 campaign, the Commission of Political Practices Report also showed contributions from three tobacco industry representatives. Jerome Anderson and Mark Baker of Anderson & Baker were lobbyists for R.J. Reynolds, U.S. Tobacco, and the Smokeless Tobacco Council. Also listed as a contributor was Leo Berry, a partner in the Helena law firm Browning, Kaleczyc, Berry, & Hoven, P.C (BKBH), which coordinated Philip Morris’s PMUSA Field Action Team Program throughout the 1990s and into 2001.<sup>78, 79</sup>

<b>Table 20: Contributions Made to Judy Martz in 2000 by Tobacco Companies and Lobbyists<sup>149</sup></b>	
<b>CONTRIBUTOR</b>	<b>AMOUNT</b>
Philip Morris	\$150
R.J. Reynolds	\$400
Jerome Anderson (lobbyist for R.J. Reynolds)	\$300
Leo Berry (partner in BKBH law firm)	\$200
Mark Baker (lobbyist for U.S. Tobacco and Smokeless Tobacco Council)	\$800
<b>Total</b>	<b>\$1,850</b>

Tobacco industry lobbyists continued to have a strong influence on Gov. Martz when she took office. As Dr. Sargent stated, Jerome Anderson and Mark Baker became Gov. Martz’ chief political advisors. Dick Paulsen, Executive Director of the American Lung Association for the Northern Rockies, stated in a 2005 interview that “the people who were the tobacco lobby had free access to [Gov. Martz’] office and the health advocates did not. The governor hosted a

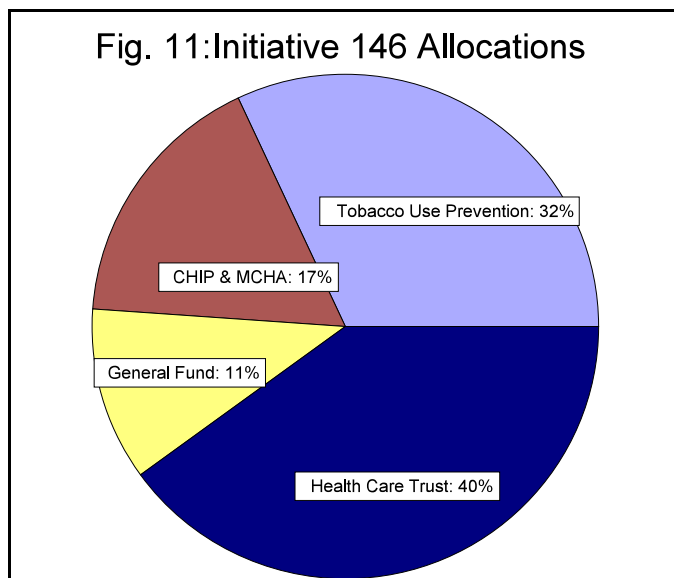
birthday party for the leading tobacco lobbyist... Jerome Anderson. He's... probably one of the most effective pro-tobacco lobbyists that I've seen being here in Montana."<sup>96</sup> The *Helena Independent Record*, in a March 17, 2002 article, discussed Mark Baker's great influence with Gov. Martz: "When Martz ran for governor, Baker advised the campaign. When she chose a Cabinet..., Baker helped interview and select state agency directors. And when the governor has a political problem, sources say, it's Baker she often turns to for advice."<sup>200</sup>

### INITIATIVE 146: SETTING ASIDE MORE MSA MONEY FOR TOBACCO USE PREVENTION

On March 5, 2002, the coalition of 12 health care groups (Table 21) called the Alliance for a Healthy Montana (AHM) submitted a proposed initiative to the Secretary of State and the State Attorney General for review, the required first step in qualifying an initiative for the November ballot.<sup>207, 208</sup> The proposed initiative, which would become Initiative 149 (I-149), would ask Montana voters to require the state to allocate Montana's \$30 million annual MSA payment as follows (Fig. 11): 32% (\$9.6 million) of the annual MSA payment for tobacco use prevention programs, with another 17% (\$5.1 million) towards increased funding for the Children Health Insurance Program (CHIP) and the Montana Comprehensive Health Association government health programs for the poor. The state general fund would receive 11% (\$3.3 million) of the annual MSA payment, and 40% (\$12 million) would go to the health care trust fund approved by voters under CA-35 in 2000.<sup>207, 208</sup> In addition to specifying the allocations of the MSA payments, I-146 would also establish a tobacco prevention advisory board. The board would consist of 15 members to be appointed by the director of the DPHHS, which would make recommendations for tobacco use prevention programs and be administratively run by the DPHHS. Furthermore, I-146 specified that the Department of Public Health would manage the tobacco prevention program.<sup>209</sup>

The health organizations in the AHM brought the initiative forward because they believed they had wide public support for using more MSA money for tobacco prevention efforts. As early as May 2001, a poll of 625 registered voters conducted by Mason-Dixon Polling and

Research of Washington, D.C for Lee Newspapers of Montana showed that 79% opposed the Governor's recommended cuts of tobacco use prevention programs.<sup>192</sup> Kristin Page Nei of the American Cancer Society stated, "[w]e think most Montanans want the settlement money to be spent for its intended purpose, so we're taking the issue directly to the people of Montana."<sup>207</sup> In a 2005 interview, Dick Paulsen of the American Lung Association explained that the idea for I-149 came from the wide public support seen by the health groups: "...the larger group [the Alliance for a Healthy



Montana] had decided that because we did some polling, we found that Montana is aware on this issue and felt that we could win this on a ballot. And so with that, we went to work - all the work that it takes to get a ballot initiative put together and passed and it was hugely successful.”<sup>96</sup>

Gov. Martz’ administration criticized I-146, claiming that it would take money from other government programs and limit the administration’s flexibility to allocate money within a constrained budget. Chuck Swysgood, Budget Director for the Governor, stated that I-149 was “a detriment to our ability to address all the needs of government services.”<sup>207</sup> Swysgood, like Gov. Martz, was personally communicating with R.J. Reynolds lobbyist Jerome Anderson, as evidenced by a May 15, 2001 letter from Lynn Huthens, an administrative assistant in the R.J. Reynolds Public Issues Department, to Jerome Anderson, Montana lobbyist for R.J. Reynolds. The letter asks Anderson to review lobbying expenses on an attached report, and describes a “[d]inner with Chuck Swysgood (Budget Director, MT Governor’s Office), Jerome and Rita Anderson... and Mark Staples (MT Wholesaler Marketers Assn.)..,” which occurred at the Green Meadows Country Club in Helena, Montana.<sup>210</sup> Gov. Martz, in a March 8, 2002 opinion letter to the *Helena Independent Record*, reiterated that the state was not financially able to recommend that the Legislature give more funding to the MTUPP, but made a commitment to “give careful consideration to the funding level of tobacco use prevention.”<sup>211</sup>

<p><b>Table 21: Alliance for a Healthy Montana Membership List, March 2002.</b> <sup>207, 208</sup></p> <ul style="list-style-type: none"> <li>American Association of Retired Persons (AARP)</li> <li>American Cancer Society</li> <li>American Heart Association</li> <li>American Lung Association</li> <li>MHA (formerly Montana Hospital Association)</li> <li>Montana branch of Campaign for Tobacco Free Kids</li> <li>Montana Dental Association</li> <li>Montana League of Women Voters</li> <li>Montana Medical Association</li> <li>Montana Senior Citizens Association</li> <li>Montana Pharmacy Association</li> <li>ProtectMontanaKids.org</li> </ul>
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On May 2, 2002, Secretary of State Bob Brown and Attorney General Mike McGrath granted permission to I-149 proponents to gather petition signatures. In order to qualify the initiative for the November 2002 ballot, proponents needed to gather the signatures of 20,510 voters.<sup>207, 208</sup> On July 16, 2002, the Secretary of State’s Office certified 22,536 registered voter signatures for I-149, thus qualifying it for the November 2002 ballot.<sup>212</sup> Verner Bertelsen, treasurer of the I-146 campaign, told reporters that “[t]he people of Montana were very receptive to the message of using the tobacco settlement for its intended purpose,” and that “many people who signed the petition were surprised to hear the tobacco settlement money wasn’t being used for tobacco prevention and health insurance for uninsured kids.”<sup>213</sup>

***Gov. Martz Makes Further Cuts to Tobacco Use Prevention Program Budgets***

Even as the health groups gained approval for I-146 to go onto the November 2002 ballot, Gov. Martz’ administration was continuing to make budget cuts to tobacco use prevention

programs. As part of Gov. Martz' plan for spending reductions, the administration proposed cutting \$115,738 from the tobacco prevention program (now under the ICC), which already had a reduced budget of \$500,000 for 2003. The administration indicated that the cuts would not affect the community programs, but would affect the state's plans for advertising, training community workers, and evaluating the program's effectiveness.<sup>214</sup> Among those programs to be cut was the "Most of Us Are Tobacco Free" campaign. The program, run by the Social Norms Project at Montana State University, was scaled back earlier in the year to prevent it from being completely eliminated.<sup>215</sup>

Dick Paulsen, Executive Director of the ALA of the Northern Rockies, in a 2005 interview described state tobacco prevention programs after the further reductions:

So we're at \$350,000 compared to the CDC standard of \$9.3 [million]. It was laughable.

So it was put in the prevention resource center, which was an arm of the governor... They were told they couldn't do any billboards, no negative advertising about tobacco, [but they were told] "yes, you can spend on communities." ...The Legislature and the Governor created absolute havoc for the tobacco control program and things they were trying to get done."<sup>96</sup>

In response to the additional funding cuts made to tobacco prevention programs, Kristin Page Nei of the American Cancer Society told reporters that "[i]t's quite tragic... We're using a Band-Aid approach by taking tobacco settlement dollars that were never intended to balance the budget and using them to balance the budget."<sup>214</sup> Nei explained that, "if we'd be more forward-thinking we could really see that this tobacco settlement money could save further people from the death and disease that are caused by tobacco,"<sup>214</sup> which would save the state money in the future.

### ***Passage of I-146***

The major support for the I-146 campaign, in terms of both funding and man-power, came from the three major health groups: the American Heart Association, American Lung Association, and the American Cancer Society. In describing the efforts behind the campaign, Dr. Sargent stated that the major health groups "did a lot of it. They did a lot of talking [to reporters and the public]. They raised a lot of money. We raised quite a bit from just individual contributions, but it was dwarfed by what Heart, Lung, and Cancer brought in. Plus, they have their own advocacy networks and working with those really helped a lot."<sup>125</sup>

The health groups formed a ballot issue committee (political committees organized to support or oppose a specific initiative) called "Tobacco Settlement for Tobacco Prevention and Health" to raise money in support of the I-146 campaign. According to the Commissioner of Political Practices Report for 2002, the committee raised cash contributions totaling \$99,015, with the bulk of those contributions coming from health organizations (Table 22). In addition, the committee recorded in-kind contributions (time, services, manpower, etc.) totaling \$14,099 from several health groups. In contrast, no formal ballot issue committee officially raised money in opposition to I-146.<sup>216</sup>

Much of the campaigning for the initiative was done on a grass roots level, with proponents making public appearances (such as press conferences held by health care officials)<sup>217</sup> and city-to-city campaigning. For instance, the Associated Press reported that Erick Tombre, a campaign coordinator for I-149, was traveling throughout the state with a group of campaigners mounting 1,400 small crosses into the ground in prominent Montana cities to be displayed during the day, and then pulling them out at night to move on to another city. The group of campaigners were attempting to dramatize the dangers of tobacco by illustrating the message that tobacco related illness kills 1,400 Montanans each year. The October 1, 2002 article indicated that the group had been to Great Falls, and planned to make Helena its final stop, in order to “put [the display] on the Capitol lawn.”<sup>218</sup> There was little opposition among voters to their efforts according to Tombre, who said, “[p]eople really understand we were supposed to use the tobacco settlement money for tobacco prevention and health programs.”<sup>218</sup>

<b>Contributing Health Organization</b>	<b>Amount of Cash Contribution</b>
American Association of Retired Persons	\$15,000
American Cancer Society - Northwest Division	\$40,000
American Heart Association, Northwest Affiliate	\$30,000
MHA - An Association of Montana Health Care Providers	\$4,600
Montana Dental Association	\$2,000
Montana Pharmacy Association	\$500
Montana Hospital Association PAC	\$6,050
Montana’s Kids First PAC	\$100
<b>TOTAL</b>	<b>\$98,250</b>

Other public efforts by I-146 proponents included Dr. Robert Shepard’s appearance at an October 1, 2002 public debate at Carroll College moderated by the Secretary of State. The public event, where arguments would be heard regarding seven initiatives and referenda appearing on the November 5, 2002 ballot, was attended by 100 people. Dr. Shepard, in arguing in favor of I-146, told the audience that a tobacco prevention program similar to Montana’s had reduced tobacco use by half in California, and that Washington state saw an 8% drop in tobacco use in 2002 as a result of their tobacco use prevention efforts.<sup>219</sup> Sen. Bob Keenan (R-Bigfork) argued against I-146, stating that shifting more money into the prevention programs would result in lowering funds in some other area, since the state was projecting a \$250 million deficit in the 2004-2005 biennium. Keenan stated that “[w]e cannot focus this much money on this one single problem,” and that “they (proponents) don’t tell me where we should cut \$9.9 million to fund this.”<sup>219</sup>

It was also an important factor in the campaign that the 79-page “2002 Voter Information Pamphlet” was distributed to the public for the first time that night. The arguments over I-149 would reach a much wider audience through the voter pamphlet, which was to be mailed out to 23,000 registered voters, and would be available on the internet.<sup>219</sup> The 2002 Voter Information Pamphlet included arguments for and against I-146. Proponent arguments in the



pamphlet were prepared by Kristin Page Nei - American Cancer Society, Verner Bertelsen - Montana Senior Citizens Association, and Jim Ahren - MHA (An Association of Montanan Health Care Providers). The proponents argument explained what I-146 would do, then went on to say:

A vote for I-146 will help reduce future medical costs and save lives... For example, since Oregon began its program in 1997, tobacco use has decreased 21 percent. A strong program in Montana will help those already addicted to tobacco quit, and will stop thousands more of our children from ever starting to use tobacco.

I-146 will provide insurance coverage for uninsured children and adults and help reduce tobacco-use illness...<sup>209</sup>

The proponents' argument went on to discuss Montana's \$30 million MSA payment, which was "provided with the understanding that part of it be spent to prevent kids from smoking and help smokers quit. Instead, those millions... were sent to the general fund and only a few hundred thousand dollars went to prevention programs."<sup>209</sup> The proponent argument also discussed the support of former Gov. Racicot for a strong prevention program, and that I-146 was supported by the American Cancer Society, American Heart Association, and American Lung Association.<sup>209</sup> The proponent's also addressed the opposition's argument that MSA money was needed for other health care programs, stating "[n]o one can tell you what [the MSA money] is spent on except that it is being put in the general fund."<sup>209</sup>

Although there were no ballot issue committees or organized media campaigns against I-146, arguments against the initiative were heard from some legislators. The arguments against I-146 that were included in the 2002 voter pamphlet were prepared by Senator Bob Keenan (R-Bigfork) (who received a \$100 campaign contribution from R.J. Reynolds in 1998<sup>160</sup>), Senator Debbie Shea (D-Butte) (who received \$175 from the tobacco industry in 2000<sup>149</sup>), Representative John Esp (R-Big Timber), Jerry Driscoll (former House member who received \$250 in tobacco industry contribution between 1990 and 1994<sup>57, 161</sup>), and Rep. Lou Kasten (who received \$150 in tobacco industry contributions from 1998 to 2000<sup>149, 160</sup>). Opponents of the initiative argued that it would take money away from needed health care services for "vulnerable populations - children, the elderly, and the disabled..." and that taking money away from health care services would also reduce federal matching funds for those services.<sup>209</sup> Opponents also argued that there was other available money for tobacco use prevention (such as the \$875,000 provided by the CDC), and that I-146 would create unnecessary bureaucracy by establishing a 15 member advisory board "with milage and expenses!"<sup>209</sup>

In the months leading into the election, I-146 proved to be popular with the public. A poll conducted by Mason-Dixon Polling & Research for Lee Newspapers surveyed 626 registered voters between September 24 and 26 on several ballot initiatives appearing on the November 2002 ballot. Those surveyed favored I-146 by 66%, with 15% opposing and 19% undecided (with a 4% margin of error).<sup>220</sup> Mason-Dixon conducted another poll from October 23-24, showing that support for I-149 continued to be strong. The October poll showed that, of the 625 questioned, 64% supported I-146, 22% were opposed to it, and 16% were undecided (with a 4% margin of error).<sup>221</sup> Support for I-146 remained at similar levels into the election. The voters approved I-146 by an overwhelming 65% (207,692 votes) to 35% (112,055 votes) in the

November 2002 election. Verner Bertelsen, treasurer for the I-146 campaign, stated “I think it just establishes the fact that the people of Montana really wanted the tobacco money to go toward tobacco prevention and health care,” and added that “it’s a big return in health, and saving lives.”<sup>222</sup>

## **LEGISLATORS IGNORE THE WILL OF THE VOTERS**

Under Montana law, voter initiatives that allocate money in the state to specific programs must be approved by the legislature, and there is no restriction that prevents the legislature from amending a voter-approved law. Thus, it would be up to the Legislature to follow the will of the voters and appropriate funds to put the I-146 vote into action. Tobacco control advocates knew that they would still have difficulties in implementing the I-146 allocations, especially since, as described by Dr. Sargent, “the legislature was still controlled by the same army that had created havoc in the [2001] session under Governor Judy Martz.”<sup>125</sup> Dr. Sargent explained that health advocates also knew that I-146 would not be respected by many legislators:

We had just passed I-146... and [the Legislature] just knew that we were wrong. And they were going to fight us tooth and nail every step of the way. They were really kind of laughing at us. It was one of those, “Yeah, you passed your little initiative, now watch us take your money away,” and that’s what they did... [in] 2003 they fought and attempted to cut, but finally had to give in and put some money into it. They put in the very bare minimum they could get away with.<sup>125</sup>

The 2003 Legislative Session would once again be marked by debate over MSA allocations, and legislators would ultimately divert part of the 32% voters dedicated to tobacco prevention into other programs. One of the earliest legislator suggestions to reallocate MSA funds came as a justification to offset budget cuts to the Department of Health and Human Services. The DPHHS had its own budget for fiscal year 2004-2005 reduced by about \$80 million dollars (and the state’s projected deficit for the 2004-2005 biennium was \$232 million). Sen. Emily Stonington (D-Bozeman) called on legislators to stake out a portion of the tobacco money for public health programs, saying it may be time to change the law that 65 percent of voters favored.<sup>223</sup> At a January 17, 2003 meeting of the Joint House Subcommittee on Health and Human Services, Stonington stated to colleagues that she wanted to amend I-146 to allow for funding of other human services, and made a motion for the committee to draft a bill for such an amendment. Sen. Stonington believed that the MSA money would eventually be raided for other programs, explaining that other legislators had their eyes on the MSA money too, and she wanted the Department of Health and Human Services “to get our place-marker in early.”<sup>223</sup> Although the Subcommittee approved Stonington’s motion to draft an amendment proposal, the proposal itself did not progress any further in the legislative process.

Tobacco control advocates responded to the notion of amending I-146 by going to the press and calling on legislators to respect the will of the voters. Dave McAlpin, Project Director for ProtectMontanaKids.org, told reporters that “it would be a shame for any of our legislators to break the faith with the voters four months after two-thirds of voters made it clear they want Montana tobacco settlement payment to be spent for tobacco prevention.”<sup>223</sup> McAlpin also suggested that the state instead solve some of its financial problems by raising the tax on cigarettes by \$1.50,<sup>223</sup> an idea that tobacco control advocates would continue to promote, and that would be at the forefront of tobacco control policy later that year. Also, an opinion letter written

by members of the major health groups (Kristin Page Nei of ACS, Dick Paulsen of ALA, and Cliff Christian of AHA), was printed in the *Helena Independent Record*, calling on legislators to “Follow voters’ will on tobacco prevention.” The letter again stated the popularity of the initiative, the benefits of tobacco prevention programs, and the suggestion that the DPHHS could increase funding through increased cigarette taxes.<sup>224</sup>

The battle over allocations of MSA money would continue throughout the 2003 Legislative Session. Senate Bill 451 would attempt to divert money to programs that assisted the mentally ill, though it would ultimately fail. In response to the attempt to divert MSA money, a House bill with the purpose of implementing I-146, rather than thwarting it, would be proposed (House Bill 756) though it too would ultimately fail. Finally, another proposal to disregard I-146 would then be made through Senate Bill 485. Through SB 485, the Legislature would successfully divert MSA money into non-tobacco related human services programs.

### ***Senate Bill 451: An Attempt to Reverse the Voter Directed Allocation of MSA Money***

On February 20, 2003, a serious threat to the voter approved allocation of MSA funds presented itself in the form of Senate Bill 451. Sen. John Esp (R-Big Timber) wanted voters to take another look at earmarking the state's tobacco settlement money, and told the Senate Public Health, Welfare and Safety Committee at a February 25, 2003 hearing that voters didn't have enough information at their disposal when they approved I-146 by a 65% to 35% margin. He proposed a measure for the November 2004 ballot that would let the next Legislature spend some of the tobacco prevention money on mental health programs.<sup>225</sup> Under the proposed referendum, the 32% of MSA money dedicated to the tobacco settlement account could be used for “programs to help adults with a sever mental illness... who want to quit tobacco use and to treat their illness.”<sup>226</sup>

At the hearing before the Senate Committee on Public Health, Welfare and Safety on February 24, 2003, testimony against SB 451 was given by representatives from several health groups and individuals. The arguments from opponents emphasized the toll of tobacco on Montanans, the high cost of health care resulting from tobacco related illness, the effectiveness of tobacco use prevention programs, and the popularity of I-146. Former Attorney General Joe Mazurek, representing ProtectMontanaKids.org, commented, “Before the ink is dry on that initiative, here you are looking at changing it.”<sup>225</sup> Mazurek also noted that voters were perfectly aware that the state was in the middle of a budget crisis when they approved I-146 and took control of the settlement money away from the legislature.<sup>225</sup> Mazurek further added that, while he recognized those with serious mental problems had problems with tobacco addiction, it did not make sense to fund the entire mental health system with tobacco settlement proceeds.<sup>227</sup>

Only one person gave public testimony in support of SB 451 at the February 24, 2003 hearing, which was joined by testimony from the bill’s sponsor, Sen. Esp. Dr. Gary Mihelish, President of the National Alliance for the Mentally Ill, spoke about the extremely high rate of smoking addiction among the mentally ill, and said the money could best be used by preventing people with mental illness from developing tobacco addictions.<sup>227, 228</sup> Sen. Esp argued that many states with budget deficits had rerouted some of the tobacco settlement money, and that voters didn't have enough options when they voted to earmark the settlement money. “I'm not asking us

to overturn what the voters did,” and that, “this gives them a chance to look at it, and another way to use it.”<sup>225</sup> Sen. Esp also said the deficit was forcing harsh cuts in programs for the mentally ill, including a plan to slash money for medication, while the anti-tobacco program was ballooning into a state bureaucracy. Esp further argued that “the voters would have looked at it a little differently if they had known the way things were going.”<sup>225</sup> SB 451 was approved by the Senate Committee by a 5 to 1 vote.

On February 27, 2003 senators preliminarily endorsed SB 451 by a vote of 27-23, just four months after voters approved the initiative dedicating \$14 million to programs aimed at preventing tobacco use. SB 451 was now set for a final Senate vote. Sen. John Bohlinger (R-Billings) (who received a \$50 contribution from R.J. Reynold lobbyist Jerome Anderson in 1994) supported the bill, and said he believed voters would have wanted to use some of the tobacco settlement payment for this purpose had they realized that such programs would have to go without money.<sup>229</sup> Other senators, however, thought that lawmakers should not be questioning the wisdom of Montana voters in passing the initiative. Sen. Emily Stonington (D-Bozeman), who in the previous month proposed reallocating MSA funds to health care programs because she believed they would eventually be raided anyway, said the proposed change in the law isn't needed because advocates for tobacco-prevention efforts may be willing to support diverting the money for two years, and that “to go out and say, 'Gee voters, you don't know what you're talking about,' flies in the face of the initiative process.”<sup>229</sup>

When word spread that opponents to SB 451 might be willing to accept a two-year diversion of MSA money, SB 451 sponsor, Sen. Esp, asked that his bill be returned to the Senate Finance and Claims Committee. On February 28, 2003, the day after giving tentative approval to SB 451, the state Senate voted 30-20 to send the measure back to the Senate Finance and Claims Committee for more work. Senator Esp decided the bill could be reworked after hearing in the previous day's debate that prevention advocates would be willing to negotiate where settlement money is spent.<sup>230, 231</sup>

Once SB 451 was put on hold, both supporters of SB 451 and tobacco control advocates seemed willing to negotiate to find some compromise. Sen. Esp stated “I want to negotiate something the tobacco prevention people can live with for a few years,” and told reporters that the Senate sent the bill back to committee in deference to the tobacco prevention groups.<sup>232</sup> Tobacco prevention advocates appeared glad that the senate had delayed SB 451 in order to pursue further negotiations. Joe Mazurek stated that, “we're pleased they sent it back,” and that, “we do want to work with the Legislature on these issues.”<sup>233</sup> However, no compromise was met on SB 451, which would be approved unchanged by the Senate Finance and Claims Committee, 12 to 7, (without a hearing) on March 26, 2003, and then approved by the full Senate 35 to 14 on March 29, 2003.<sup>227</sup>

After being approved by the full Senate, SB 451 was transmitted to the House, where a hearing was held before the House Appropriations Committee on April 2, 2003. At the hearing, several representatives from health groups and health advocates again spoke against SB 451, while no supporting testimony was offered. Joe Mazurek testified to the committee that the bill's changes were not temporary (as had been the goal of the negotiations), but rather made permanent changes in the allocation of the MSA funds. Mazurek further stated that, under I-146,

money for cessation would already be available to assist the mentally ill who wanted to stop smoking, and that the only real effect of SB 451 would be to limit the funds for statewide tobacco prevention efforts.<sup>234</sup> The House Appropriations Committee tabled SB 451, thus killing it, on April 7, 2003.<sup>226</sup>

***House Bill 756: An Attempt to Safeguard the Voter Approved MSA Allocations***

The strong efforts to reallocate the MSA funds away from tobacco prevention led Rep. Christine Kaufman (D-Helena) to sponsor House Bill 756, introduced on March 19, 2003. HB 756 proposed to implement I-146 by ensuring that the voter approved funding formula remained intact.<sup>235</sup> On March 25, 2003, a hearing was held before the House Appropriations Committee, where 15 health advocates gave supporting testimony. Among the testifying proponents, Joe Mazurek, representing PMK, noted that “[s]ince the legislature has convened, most of the major newspapers have continued to endorse the notion that we need to fully fund the tobacco prevention program and it ought to be implemented as the voters have indicated.”<sup>236</sup> Chris Devany, also representing PMK, handed out to committee members a chart that compared the Tobacco Use Prevention Program in past years to the projected programs if I-146 were to be fully implemented (Table 23).

Only one person gave opposing testimony to HB 756 at the House Committee hearing. Steve Yeakel, Representing Montana Council for Maternal and Child Health, said that he supported committing \$3.2 million a year for tobacco prevention as was proposed in SB 485 (see section below), and supported an 18 cent tobacco tax increase. However, because some county health departments might lose funding for mental health medications and some individuals might lose medicaid services, he could not support more than \$3.2 million for tobacco prevention.<sup>236</sup> In response, HB 756 sponsor, Rep. Kaufman, stated that she believed the Legislature could find other funding sources for human services programs, without using tobacco settlement dollars.<sup>238</sup>

<b>Table 23 : MT Tobacco Use Prevention Programs: 2000 and 2002 Bienniums Compared to Full Funding Under I-146 for the 2005 Biennium.</b> <sup>237</sup>			
<b>Key tobacco prevention program elements</b>	<b>MTUPP activities during FY 2000-2001</b>	<b>MTUPP activities during FY 2002-2003</b>	<b>Potential comprehensive MTUPP receiving full funding (FY 2004-2005)</b>
<b>Community-base Programs</b>	Partially funded programs in 40 of 56 counties, 7 of 8 tribes, all 5 urban Indian centers.	Partially funded programs in 18 of 56 counties, 1 tribe, 3 of 5 urban Indian centers.	Will fully fund programs in all 56 counties, with all 8 tribes, and all 5 urban Indian centers reaching the majority of Montanans

<b>Statewide Training and Technical Assistance</b>	Provided some training for community-based contractors; Conducted 2 statewide conferences; Established a complete resource library.	Provided limited training for community-based contractors; no resource library.	Will provide extensive training and TA for all community contractors to ensure that best practices are followed for optimum success at the community level. Will re-establish a complete resources library to insure that contractors have necessary tools to be successful.
<b>School Based Programs</b>	Nearly 70% of school districts received grants for varying levels of tobacco prevention; 332 teachers trained; curriculum materials provided to train teachers and their classrooms. Some school tobacco use policies improved.	No school-based prevention programs except for the limited use of some left-over curriculum material. NO Teacher training. Effective tobacco-free school policies not in place in all schools.	Will reach 100% of Montana schools K-12 with scientifically proven effective prevention and cessation programs. Will train teachers within all schools and provide curriculum to all students. All schools and school property will be tobacco free 24-7
<b>Surveillance &amp; Monitoring</b>	Obtained statewide baseline data on a variety of tobacco related issues and published results; Assisted some communities with needs assessment and data collection	Very limited amount of data systems.	Will obtain statewide baseline data on a wide variety of key tobacco-related issues and published results. Will assist all communities with needs assessment and data collection, and assure that all MTUPP activities are measured for effectiveness. Will prepare program evaluation reports for Advisory Council and Legislature.

<b>Administration Planning, Staff</b>	Developed MTUPP staffing infrastructure; Created comprehensive five-year plan with Governor's Advisory Council and ensured public input; Established and tracked budgets and published program reports.	MTUPP infrastructure dismantled; no opportunity for public input; 5-year plan shelved.	Will re-develop MTUPP staffing infrastructure for long-term implementation of MTUPP. Will update the comprehensive five-year plans with a new Advisory Council and ensure public input for long-term implementation. Will establish and track budgets and contracts, follow required procurement and contracting procedure.
<b>FUNDING TOTAL</b>	<ul style="list-style-type: none"> <li>• FY00 \$3.5 mil. - General Fund.</li> <li>• FY01 \$3.5 mil. - General Fund.</li> <li>• \$1.71 million - CDC Funds.</li> </ul> <p><b>Biennial Total: \$8.71 million</b></p>	<ul style="list-style-type: none"> <li>• FY02 \$0.5 mil. - General Fund.</li> <li>• FY03 \$0.384 mil - General Fund.</li> <li>• \$1.75 mil. - CDC Funds.</li> </ul> <p><b>Biennial Total: \$2.63 million</b></p>	<ul style="list-style-type: none"> <li>FY04 \$9.03 mil. - General Fund.</li> <li>FY05 \$9.26 mil - General Fund</li> <li>\$1.75 mil - CDC Funds</li> </ul> <p><b>Biennial Total: \$20.04 million</b></p>

The chairman of the House Appropriations Committee, Sen. Dave Lewis (R-Helena), gave the bill lukewarm support at the March 25, 2003 hearing. Lewis told tobacco prevention activists that he would try to grant their wish for \$9.3 million for prevention programs, but warned that less money would therefore go to human service programs for the needy.<sup>239</sup> Lewis further stated that “I’m tired of getting beat over the head,” and that “I’ll vote for this, but we got to come up with the money somewhere else.”<sup>239</sup> Rep. Lewis did vote in favor of HB 756, which was passed by the House Appropriations Committee on March 26, 2003 by a voter of 13 to 6.<sup>235</sup> It would next have to be voted on by the full House.

As conveyed by Rep. Lewis’ comments, the House Committee’s support of HB 756 resulted largely from the health advocates’ pressure on the Legislature. According to the *Billings Gazette*, “[t]obacco prevention lobbyist lined the Capitol’s halls and packed hearing rooms to support keeping the voter-approved funding formula intact.”<sup>240</sup> In the same article, Rep. Lewis said that the health advocates that “[t]hey won fair and square.”<sup>240</sup>

On March 28, 2003, the full House approved HB 756 by a vote of 59 to 38. Local newspapers, however, reported that many lawmakers were still critical of the bill’s passage, arguing that the money should be available for other programs, because the human services budget was underfunded. HB 756 sponsor Rep. Kaufman responded in news reports that she was confident that the Legislature would find other sources of money to adequately fund human services programs.<sup>238</sup> Kaufman stated that “[i]n the coming weeks, we have many opportunities to find revenue... And we will.”<sup>241</sup>

In reaction to the House passage of HB 756, Joe Mazurek showed cautious optimism, saying he appreciated the support of the House, but knew that tobacco control advocates would still have to fight for their cause in the Senate. Mazurek, a former State Attorney General and former president of the Senate (Mazurek served on the State Senate from 1981 to 1993, and was elected President of the Senate from 1991 to 1993), noted that tobacco control advocates “still got a long struggle.”<sup>241</sup> It was also the opinion of the major health groups (ACS, AHA, and ALA) that the House supported HB 756 only because members knew it was unlikely to gain approval in the Senate; according to a report by the major health groups:

House Appropriations Committee and full House support of this bill was realized in our opinion not because members wanted to give full funding to MTUPP, but rather because they wanted the voting record to show that they supported the wishes for voters to implement I-146. In other words this was a “safe” vote for House members because they knew HB 756 would not pass the Senate.<sup>242</sup>

House Bill 756 was heard by the Senate Committee on Finance and Claims on April 15, 2003. By this time, however, the chances of passage for HB 756 were slim, mostly because Senate Bill 485, which would divert some MSA funds to human service programs for two years, had been introduced and had broad support from the legislature (see next section). At the April 15, 2003 hearing, 22 proponents testified in support of HB 756. Among them, Joe Mazurek, representing PMK, acknowledged that HB 756 would probably not win approval in light of the popular two year diversion proposed in SB 485. Mazurek also told the committee, however, that the amount of funding proposed under SB 485 (\$3.2 million per year) compared to the minimum recommendation of the CDC (\$9.36 million) was analogous to a Ford Fiesta compared to a Cadillac.<sup>243</sup> The Senate Finance and Claims Committee indefinitely postponed any action on SB 756, which died in committee on April 26, 2003. In response to the bill’s defeat, Mazurek told reporters, “We fully expected this,” and that “they’ve given us what they think they can afford to give us.”<sup>244</sup>

### ***Senate Bill 485: Diverting the MSA Money to Non-Tobacco Related Health Programs***

The debate over MSA allocations would now be heard as Senate Bill 485 moved through the legislative process. Senate Bill 485, sponsored by Senator John Cobb (R-Augusta), was introduced on March 26, 2003, and was referred to the Senate Finance and Claims Committee where a hearing was held on April 1, 2003. At the Senate Committee hearing, SB 485 sponsor Sen. Cobb explained that the bill would create a “prevention and stabilization fund” which would divert \$11,888,960 (about 65% of the \$18 million biennium allocation) from the amount dedicated to tobacco prevention under I-146. The money would then be appropriated to specific human services programs (Table 24). In his introduction, Sen Cobb noted that SB 485 would only be effective for 2 years (to sunset on June 30, 2005) and that all MSA money could then be used for tobacco prevention programs, unless the legislature changed the law or another initiative was passed.<sup>245, 246</sup>

The deficit in the DPHHS budget and lack of funding for human services programs led some groups that had previously supported I-146 to testify in favor of SB 485. Testimony was given by a total of 15 proponents. Pat Melby, representing the Montana Medical Association (MMA), stated that the MMA was a reluctant supporter of SB 485, and that the support was



conditional on the bill's June 2005 sunset provision. Jim Ahrens, representing the Montana Hospital Association (MHA), said his group supported SB 485 despite the MHA's previous support of I-146, and acknowledged that they were in difficult financial times with difficult budget choices to make. Jane McCall, representing the Deaconess Billings Clinic, which also supported I-149, understood that the state was now in dire circumstances, and that the compromise under SB 485 was needed.<sup>245</sup>

**Table 24: Appropriations From Prevention and Stabilization Account for 2004-2005 biennium Under SB 485, Section 4.**<sup>246</sup>

Mental Health Services - \$6,500,000
Child Care - \$2,000,000
The Montana Initiative for the Abatement of Mortality in Infants Program - \$1,100,000
Independent Living Services - \$457, 532
Extended Employment Service - \$541,278
Child Support Enforcement - \$1,263,678
Mental Health Medicaid Service Rates - \$800,000
Medicaid Hospice Services - \$340,000
Medicaid Home Health Therapy Services - \$68,000
Poison Control - \$77,908
AIDS Funding - \$84,000

Funds Remaining in the prevention and stabilization account after these appropriations have been made may be used to fund appropriations from the prevention and stabilization account that are authorized in House Bill No. 2 (the state's General Appropriations Bill)

There were only 3 individuals testifying against SB 485, and they only gave very mild opposition to the "temporary diversion" of MSA money that was proposed. Joe Mazurek, representing PMK, opposed the bill, but also stated that the groups recognized the state's budget predicament and were willing to take less than the full amount that the voters approved. Mazurek ended his testimony by saying he hoped that the tobacco prevention would get fully funded by the 2005 biennium. Verner Bertelsen, representing Montana Senior Citizen's Association, stated that he was reluctant to testify against SB 485, and also hoped that tobacco prevention would be fully funded in the long run. Finally, Sammy Butler, representing the Montana Nurses Association, after commending Sen. Cobb for his commitment to fund human services programs, stated that his organization felt an obligation to respect the will of the voters, and that they reluctantly opposed SB 485.<sup>245</sup>

The Senate Finance and Claims Committee unanimously approved SB 485, 19 to 0, on April 1, 2003. The bill then went before the full Senate, which passed the bill by vote of 43 to 6 on April 14, 2003. SB 485 would next be transferred to the House, where it would be referred to House Committee on Business and Labor.<sup>246</sup> At the April 16 hearing on SB 485 before the House Committee on Business and Labor, proponent testimony was given by representatives from 4 human services groups, including Jim Ahrens of the Montana Hospital Association. Testimony in opposition to SB 485 was again presented by Joe Mazurek of PMK and Sammy Butler of the Montana Nurses Association.<sup>247</sup> The House Committee on Business and Labor approved SB 485 by 14 to 4 on April 16, 2003.

The full House approved SB 485 in a 60 to 40 vote on April 23, 2003.<sup>246</sup> According to the Associated Press, none of the House members commenting on the passage of the bill by the full house argued against the need for funding of human services programs. Instead, House members against SB 485 focused their criticisms on respecting the will of the voters expressed in I-146, and the lack of a long term solution to the state's budget problems.<sup>248</sup> With the acquiescence from the very health groups that campaigned to get I-146 approved by voters, SB 485 passed with no trouble, and almost \$11.8 million (about 65% of the \$18 million directed under I-146) was diverted away from tobacco prevention in the 2004-2005 biennium.

So by the end of April 2003, voter approved I-146 was virtually voided for two years. Thus, tobacco use prevention programs was allocated \$3.2 million annually for the 2004-2005 biennium, as opposed to the \$9 million annually specified under I-146 (Table 25). Furthermore, the amount actually allocated to the TUPP in 2005 was lowered to \$2.5 million per year (in addition to about \$880,000 in CDC funding) after reduction adjustments to the state's MSA payment (Table 26 and 27). The state also appointed 15 people as a Tobacco Prevention Advisory Board in July of 2003 as was mandated by I-146, which would advise the DPHHS on how to allocate MSA money and play a similar role as the disbanded Governor's Advisory Council on Tobacco Use Prevention (Table 28).<sup>249</sup>

<b>Year</b>	<b>Gen. Fund</b>	<b>Trust Fund (CA-35)</b>	<b>Tobacco Prevention (I-146)</b>	<b>Human Services (SB 485)</b>	<b>CHIP, CHA (I-146)</b>	<b>Total</b>
2000	\$38,804,411	NA	NA	NA	NA	\$34,804,411
2001	\$15,990,244	\$10,650,750	NA	NA	NA	\$26,640,994
2002	\$18,647,410	\$12,431,607	NA	NA	NA	\$31,079,017
2003	\$18,699,611	\$12,466,407	NA	NA	NA	\$31,166,018
2004	\$3,104,530	\$11,289,200	\$3,200,000	\$5,831,360	\$4,797,910	\$28,223,000
2005	\$3,182	\$11,572,409	\$3,200,000	\$6,057,600	\$4,918,100	\$28,930,000
<b>TOTAL</b>	<b>\$94,428,506</b>	<b>\$58,409,964</b>	<b>\$18,288,960</b>	<b>\$11,888,960</b>	<b>\$9,716,010</b>	<b>\$180,843,440</b>
* NA indicates that the specified allocation category was not yet in effect.						

	2000	2001	2002	2003	2004	2005	<b>CDC Recommended Total Program Annual Cost for Montana (millions)</b>
<b>State Funding (millions)</b>	\$3.50	\$3.50	\$0.50	\$0.38	\$2.50	\$2.50	
<b>Federal CDC Funding (millions)</b>	\$0.74	\$0.74	\$0.88	\$0.88	\$0.88	\$0.88	
<b>Total</b>	\$4.24	\$4.24	\$1.38	\$1.26	\$3.38	\$3.38	Upper Estimate: \$19.68 Lower Estimate: \$9.36

<b>Budget Category</b>	<b>Estimated Yearly Funding Allocations (State Funding: \$2.5 million per year) (CDC Funding: \$0.88 per year)</b>	<b>CDC Recommended Range for Program Element Budgets for Montana</b>
Cessation	\$842,436	\$916,000 - \$3,661,000
Chronic Disease Prevention Programs	\$100,000	\$2,791,000 - \$4,166,000
Communications	\$1,236,233	NA
Community Based Programs	\$2,054,788	\$1,466,000 - \$2,958,000
School Based Programs	\$0	\$1,802,000
Special Emphasis Population	\$0	NA
Surveillance and Evaluation	\$65,270	\$814,000 - \$1,712,000
Technical Assistance and Training	\$78,500	NA
Enforcement	\$0	\$529,000 - \$1,008,000
Statewide Programs	\$0	\$352,000 - \$879,000
Administration, Planning, Management	\$415,237	\$407,000 - \$856,000
<b>TOTAL</b>	<b>\$3,556,231</b>	<b>\$9,355,000 - \$19,679,000</b>

**Table 28: Montana Tobacco Use Prevention Advisory Board**

Patrick A. Aberle, Chair, Representing New West Services (a Helena health insurance company)  
Robin Morris, Vice-Chair, Representing Boys and Girls Clubs of America  
Dan Dennehy, Representing Local Health Departments  
Senator John Esp, Representing the Montana State Senate  
Sandra Hood, Representing Local Health Departments  
Joan Huffsmith, Representing Montana Association of Counties  
D.J. Lott, Representing Montana Urban Indian Centers  
Shelly Meyer, RN, Representing Montana Nurses Association  
Sharon Patton-Griffen, Ed.D., Representing MT/WY Tribal Leaders Council  
Holly Rader, Representing Montana Youth  
Marianne Rose, Representing Montana Association of Counties  
Richard Sargent, MD, Representing Montana Health Care Providers and ProtectMontanaKids.org  
Representative John Sinrud, Representing Montana House of Representatives  
Bert W. Winterholler, DDS, Representing Montana Dental Association

## **INCREASING THE TOBACCO TAX**

The \$220 million budget deficit projected for the 2004-2005 biennium not only provided a justification for diversion of MSA funds to other human services programs, but also affected the 2003 Legislature's consideration of increased tobacco taxes.<sup>252</sup> Several tobacco tax increases were proposed in the 2003 Legislature, though only one would actually pass, Senate Bill 407. Even SB 407, however, would have probably failed if state legislators were less desperate to find additional state revenue. In the opinion of the major health groups (ACS, AHA, ALA), "had the state's budget crisis not existed, a tobacco tax increase would not likely have passed. Most legislators were clearly motivated simply by the need for additional revenue generated by the tobacco tax increase."<sup>242</sup> In addition to the state's projected budget deficit, a survey of 405 Montana voters sponsored by ProtectMontanaKids.org conducted in June 2003 by Harstad Strategic Research showed that tobacco taxes were a popular source of health care funding. The survey showed that 66% of those surveyed favored increasing tobacco taxes by 50 cents per pack if the revenues were directed to Montana health care services.<sup>242</sup>

As a result of the lack of funding for government services in 2003 and the public popularity of tobacco taxes as a source of health care funding, a tobacco tax increase was a popular option of revenue, despite what health advocates called a "reluctance on the part of some members of the legislature to increase tobacco taxes at all..."<sup>242</sup> Several tobacco taxes were proposed by both Republicans and Democrats, though all of them except for SB 407 failed (Table 29). Throughout the failed attempts to increase the cigarette tax, tobacco control groups gave consistent support to the proposed bills, while tobacco industry lobbyists consistently argued against them.

<b>Bill</b>	<b>Sponsor</b>	<b>Description</b>	<b>Legislative Action</b>
SB 488	Sen. Dan Harrington (D - Butte)	Generally revised tax laws; increased cigarette tax 52 cents for the General Fund	Indefinitely postponed in Senate.(4/2/2003).
SB 309	Sen. John Bohlinger (R-Billings)	Increase cigarette tax 42 cents and increase video gambling tax for school funding	Indefinitely postponed in Senate Taxation Committee.(3/19/2003)
SB 351	Sen. John Cobb (R-Augusta)	Increase cigarette tax 48 cents to fund DPHHS services.	Indefinitely postponed in Senate Taxation Committee.(3/18/2003)
HB 204	Sen. Bob Lawson (R-Whitefish)	Affordable Health Insurance Act; increase cigarette tax \$1.50 for health insurance (proposed by State Auditor John Morrison)	Tabled in House Taxation Committee.(3/06/2003)
HB 355	Rep. Brad Newman (D-Butte)	Voter approval increase of cigarette tax by 52 cents for General Fund	Failed in House, 58-42 (4/02/2003)
HB 413	Rep. Ron Erickson (D- Missoula)	Increase cigarette tax 82 cents for mental health care funding	Tabled in House Taxation Committee (3/11/2003)
HB 750	Rep. Roy Brown (R-Billings)	Increased cigarette tax 47 cents for variety of purposes; appropriated money from General Fund and coal trust	Failed in House to receive 3/4 vote, 68-30. (3/28/2003)
HB 763	Rep. Kim Gillan (D-Billings)	Temporarily increased cigarette tax 47 cents for General Fund; took money from coal trust.	Died in House Taxation Committee. (3/31/2000)

### ***Health Advocates Lobby for Cigarette Tax Increase***

The tobacco tax in Montana had not been permanently increased since 1990, when it was raised from 16 cents to 18 cents per pack. Former Gov. Marc Racicot (R) in 2000 had included a cigarette tax increase of 38 cents a pack (to a total 56 cents a pack) in his final budget recommendation before leaving office, but Gov. Judy Martz, who signed a no-new taxes pledge during her campaign, rejected the proposal.<sup>254</sup> Tobacco control advocates had been promoting the idea of increased tobacco taxes throughout 2002 and 2003 as a way to raise funds for state programs and reduce tobacco use. In an April 30, 2002 opinion letter to the *Helena Independent Record*, Kristin Page Nei of ACS, Cliff Christian of AHA, and Dick Paulsen of ALA, wrote that “[t]he debate about tobacco taxes has recently heated up,”<sup>255</sup> and noted that Montana in 2002 had the 11<sup>th</sup> lowest cigarette tax in the nation. The letter also explained the health costs in Montana resulting from smoke-related illness, and the potential for an increased cigarette tax to raise revenue for healthcare programs and deter children from smoking.<sup>255</sup> The major health groups and other tobacco control advocates would continue to make statements in news articles as the debate over cigarette taxes became a greater focus in local newspapers.

Tobacco control advocates also showed the popularity of the tobacco tax among Montana voters to state legislators. A Harstead Strategic Research Poll conducted between November 20-

25 and paid for by health groups (ACS, AHA, ALA) in ProtectMontanaKids.org showed that, of 602 registered voters, 69% supported raising the per pack cigarette tax from 18 cents to \$1.50 for the purpose of funding health programs, 27% were opposed to the increased tax, and 3% were undecided (the margin of error was 4%). The poll was released on December 11, 2002, less than a month before the 2003 Legislature was to convene.<sup>256, 257</sup>

Health groups and tobacco control advocates showed support for the failed cigarette tax proposals introduced throughout the 2003 Legislature (Table 30). At a January 27, 2003 House Taxation Committee hearing where HB 204, HB 355 and HB 314 were presented, supporting testimony for cigarette taxes was given by 34 people, many of them representing health groups. Many of those same individuals and health groups also testified in favor of the SB 309 at the February 6, 2003 hearing before the Senate Taxation Committee,<sup>258</sup> in support of SB 351 at the February 14, 2003 Senate Taxation Committee hearing,<sup>259</sup> and in support of HB 763 at the March 31, 2003 House Taxation Committee Hearing.<sup>260</sup>

**Table 30: Health Advocates Testifying in Favor of Cigarette Taxes During 2003 Legislative Session.**<sup>261-264</sup>

<p>Tanya Ask, Blue Cross/Blue Shield          Dr. Richard Sargent, Montana Lung Association          Pat Callback Harper, AARP          Sammy Butler, Montana Nurses’s Association          Pat Melby, Montana Medical Association          Denise Pazzini, New West Health Care          Dick Paulsen, American Lung Association          Mike Foster, St. Vincent Health Care in Billings; St. James Health Care in Butte; and Holy Rosary in Miles City          Kristianne Wilson, Deaconess Billings Clinic          Cliff Christian, American Heart Association          Mary McCue Montana Dental Association          Frank Cody, Montana Health Care Association          Vernell Bertelson, Montana Senior Citizen’s Association          Bob Olsen, Montana Hospital Association          Jeri Dome, Montana Heart Association          Erin McGowan, Protect Montana Kids          Kathy McGowan, Montana Council of Health Centers          Jim Aaronson, Montana Hospital Association</p>
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***Tobacco Lobbyists Argue Against Increased Cigarette Taxes***

When the idea of increasing cigarette taxes began to be reported in local newspapers as an option that legislators were willing to consider, the tobacco industry began to criticize the idea. John Singleton, a spokesman for R.J. Reynolds, told the *Billings Gazette* that “[i]t’s a relatively small slice of the population to be paying for health care, budget deficit reduction, whatever they’re going to use the money for.”<sup>254</sup> Singleton also stated that “[e]xcise taxes are already pretty high, and these various states are collecting quite a lot of revenue from the tobacco companies as it is.”<sup>254</sup> The argument that the tobacco industry and smokers were paying an unfair share of taxes would be continued throughout the legislative session.

Tobacco industry lobbyists opposed the failed cigarette tax proposals throughout the 2003 Legislative session. R.J. Reynolds lobbyist Jerome Anderson, in giving opposing testimony to

HB 204, HB 355 and HB 314 at the January 27, 2003 House Taxation Committee hearing, stated that HB 204 would increase the state cigarette tax by 833%, and that HB 355 and HB 314 would amount to the highest tax increases he had seen in 56 years of Legislative sessions.<sup>265</sup> Anderson added that smokers already pay their fair share and, though he agreed that Montanan needed help with health insurance and prescription drugs, he thought “those responsibilities are the responsibilities of everyone in Montana and not just a selective few.”<sup>265</sup> Reflecting standard tobacco industry rhetoric, Anderson also suggested that large cigarette tax increases would lead to smuggling cigarettes from states with cheaper taxes or buying over the internet without proper security against sales to minors.<sup>265</sup> Jerome Anderson and other tobacco industry representatives repeated these arguments when testifying against SB 309 at the February 6, 2003 Senate Taxation Committee hearing,<sup>258</sup> against SB 351 at the February 14, 2003 Senate Taxation Committee hearing,<sup>259</sup> and against HB 763 at the March 31, 2003 Taxation Committee Hearing.<sup>260</sup> Along with Jerome Anderson, Aimee Grmoljez, an attorney with the firm Browning, Kaleczyc, Berry & Hoven (BKBH), testified as a representative of Phillip Morris against the cigarette tax proposals, as did Mark Baker, representing U.S. Smokeless Tobacco and Mark Staples, representing Montana Wholesale Distributors.<sup>261-264</sup>

### ***Senate Bill 407: Republican Legislators Pursue Cigarette Tax in Time of Budget Deficit***

Governor Martz, as late as March 2003, was standing firm to her pledge not to raise new taxes, and stated specifically that her promise to veto tax increases included any cigarette taxes.<sup>266</sup> Even in the face of a reported \$232 million budget deficit, and with no solution to funding human services programs, Gov. Martz told reporters that she could not support the idea of paying the state’s bills by raising “sin” taxes.<sup>266</sup> Although Gov. Martz did indicate a willingness to compromise her tax veto promise in support of proposed HB 750, which proposed violating the state’s coal tax trust fund (a constitutional trust fund for coal taxes established in the 1970s) and would therefore not gain enough votes because Democrats were unwilling to violate the trust.<sup>267</sup> However, because the budget deficit in March 2003 was beginning to look unsolvable, Republican legislators became less opposed to raising tobacco taxes. As a result, Senate Bill 407, originally a Governor Martz proposed bill to cut income taxes by 10% and replace the lost revenue with selective sales tax aimed mostly at tourist, was overhauled by GOP senators. The new version of SB 407 would lower the income tax relief to 5% and created more tax revenue, including a 52 cent cigarette tax increase (which was not included in Martz' original bill proposal) from 18 to 70 cents per pack.<sup>268, 269</sup>

On March 12, 2003, a three-member Senate subcommittee converted Gov. Matz’s tax revision bill, SB 407, so that it would raise millions of dollars to balance the state budget, in addition to the bill’s original intent of lowering state income taxes and imposing a sales tax on certain items mostly aimed at tourist use. Early estimates showed that the amended SB 407 would create \$77 million in new money for the general fund over the next two fiscal years. SB 407, as originally proposed, would have raised \$64.3 million a year from a 4% sales tax, and would return that amount to taxpayers through a cut in state income tax of an identical \$64.3 million.<sup>269</sup> As amended, SB 407 would reduce the income tax cut to \$37.2 million a year, and increased some of the taxes on car rentals and hotel rooms from original levels in the governor’s proposal. Amendments to SB 407 included a two-year cigarette and tobacco tax increase that

was not in Gov. Martz' original proposal. Under the SB 407 tax increases, the state's cigarette tax would be increased from 18 cents to 70 cents a pack (raising an estimated \$28 million a year), and would double the tax on other tobacco products to 25% (which would raise an estimated \$2.1 million a year).<sup>269</sup>

The SB 407 amendments made on March 13, 2003 were supported by the two Republican Senators (Senators Mike Taylor of Rollins and Walter McNutt of Sidney) on the three person subcommittee, and opposed by the one Democrat Senator (Jon Ellingson of Missoula). In addition to the amendments that were made, Ellingson proposed increasing taxes on large businesses to raise more revenue, and increasing funding to human services and education. Thus, Ellingson opposed amended SB 407, even though he commended the increased taxes that were created, because he felt the amendments had not gone far enough.<sup>269</sup> Ellingson additionally stated that he did not oppose the increase of cigarette taxes in SB 407.<sup>270</sup>

On March 17, 2003, SB 407 was reviewed by the Senate Taxation Committee, which approved the bill on a party line vote, 7 Republicans to 4 Democrats. GOP lawmakers commented that even though increasing taxes in SB 407 was not easy for them, they found it necessary to come up with a solution to the state's budget deficit with little more than a month remaining in the legislative session. Democrats, although supportive of providing money for the budget through tax increases, objected to the tax relief structure of SB 407, which returned more money to those making more than \$500,000 per year than to those making less than \$20,000 per year.<sup>270</sup>

On March 20, 2003, SB 407 was voted on by the full Senate, where it was barely passed in a 25 to 24 vote after a 3 hour 40 minute debate. A majority of Republicans voted for the bill (22), while the majority of Democrats opposed it (17). Although the bill did narrowly pass, Sen. Majority Leader Fred Thomas (R-Stevensville) believed that SB 407 needed 34 votes in order to make it veto-proof by Gov. Martz, who had indicated that she would veto the new version of the bill. Thus, in the hope of getting broader support for a veto-vote, Thomas asked that SB 407 be sent back to the Senate Taxation Committee.<sup>271</sup> However, even though SB 407 was not broadly supported, the need for funding of state programs led legislators to continually work on finding a compromise that would be accepted by both parties.

On April 2, 2003, SB 407 was amended to address Democrats' demands: the 5% cut in state income tax was put on hold for one year and, in an amendment proposed by Sen. Emily Stonington (D-Bozeman), the two-year cigarette tax increase was made permanent. SB 407 was then approved by a vote of 35 to 15. With 35 votes, SB 407 now had enough votes for a veto override, though Gov. Martz' office, in response to the bill's approval, was not taking a clear public stance on the bill's provisions. Chuck Butler, Communication's Director for the Governor, stated to the press that "The governor is pleased that 407 is still alive," and that "the good news is it's got the income tax reduction, and there's some concern about the cigarette tax increase and the permanency of it."<sup>272</sup>

Gov. Martz' position of SB 407 became clearer only a few days after it gained Senate approval. At a weekly news conference on April 4, 2003, Gov. Martz indicated that she would veto SB 407 unless the legislature changed it before it reached her desk. Gov. Martz stated that



she objected to the use of a cigarette tax increase, and expressed her preference for a sales tax on restaurant food instead. Gov. Martz also stated that she would be willing to support a cigarette tax increase only if temporary, and if accompanied by a comparable withdrawal from the state's coal tax trust.<sup>273</sup> Republican legislators, however, did not seem very concerned with the governor's preferences. In response to the governor's comments, Republican Sen. Majority Leader Fred Thomas stated that "the bill's going to go to her, in large part, the way it is."<sup>273</sup> Thomas also stated that, although the veto "is a very serious thing," he was confident it would nevertheless pass because "the vote on the Senate floor tells us we can probably get that veto overridden."<sup>273</sup>

On April 8, 2003, SB 407 was heard before the House Taxation Committee, where opposing testimony was presented by several businesses affected by the new taxes that would be created, including the tobacco industry and its ally groups. Among those testifying against SB 407 were Jerome Anderson for R.J. Reynolds, Aimee Grmoljez for Phillip Morris, Mark Staples for Montana Wholesalers Association (a state association of the American Wholesale Marketers Association, representing convenience store product distributors), and Bob Gilbert for Montana Convenience Stores Association, as they did against the several other proposed bills with cigarette tax increases in the 2003 Legislative session. Among those giving supporting testimony for SB 407, some health organizations were represented (Deaconess Billings Clinic, Montana Medical Association, Montana Hospital Association), but comments surrounding SB 407 focused on the need to fund health care service programs, rather than reducing smoking through increased cigarette taxes.<sup>274</sup>

The House Taxation Committee on April 8, 2003 approved SB 407 on a 10-8 party line vote, with "Republican members... grudgingly band[ing] together to approve the bill that provides immediate help for the state's money shortage..." outvoting Democrats who objected to bill's tax breaks for the wealthy.<sup>275</sup> In commenting on the cigarette tax, House Speaker Doug Mood (R-Seeley Lake) stated that "[p]hilosophically, Republicans do not like to raise taxes... But practically, we understand the cigarette tax in Montana is one of the lowest in the nation and we understand if we don't raise the tax, anti-tobacco interests will put an initiative ballot to do it."<sup>276</sup> State Republicans also reasoned that a ballot measure to increase the cigarette tax would politically decrease the Legislature's ability to decide how to spend the money raised from the tax.<sup>276</sup>

SB 407 finally gained approval from the House on April 15, 2003 by a one-vote margin, 51 to 49. SB 407 was seen as crucial by Republican legislators in solving the state's budget deficit, and Gov. Martz was now expressing a willingness to bend her opposition to the cigarette tax increase. In responding to reporters questions at a weekly news conference, Gov. Martz stated "I have said I do not want to raise taxes on cigarettes; I am not going to raise taxes on cigarettes," then added "But this session is not all about me."<sup>277</sup> Martz went on to say that "if we don't do this just because of my own feelings toward something, we are going to hurt a lot more people than me."<sup>278</sup> The Senate approved the amendments made to HB 407 by the House, and the Governor signed HB 407 on April 30, 2003. In commenting on the 2003 Legislative Session in a May 3, 2003 interview with the Billing Gazette, Gov. Martz stated that the change in SB 407 was not really to her liking, but it was not worth trying to get the cigarette tax out of it. Gov. Martz stated, "[t]hey compromised on some things and so did I."<sup>279</sup>

### *Initiative 149 to Increase the Cigarette Tax*

In December 2003, health advocates knew they had enough public support to pursue a statewide voter initiative to increase the cigarette tax by \$1, for a total tax of \$1.70 per pack. A December 2003 telephone poll conducted by Harsted Strategic Research of Boulder, Colorado, and funded by Protect Montana Kids, showed that of 502 likely voters, 71% favored an increase of \$1 per pack on cigarettes. The results of the poll were reported in a February 10, 2004 article in the *Helena Independent Record*.<sup>280</sup> Dave McAlpin of Protect Montana Kids stated in the article that “[t]his tells us there's great support among the public for a further increase in the tax,” and that “Montanans are willing to raise the tax because they see the need for health care expenditures and the need to reduce tobacco consumption.”<sup>280</sup> The show of public support was reinforced by an unscientific poll conducted by the *Helena Independent Record* in its Question of the Week, which reported in its March 22, 2004 edition that, among 911 responses, 612 (67%) favored raising the cigarette tax and 299 were opposed.<sup>281</sup>

With the knowledge that a cigarette tax was favored by the public, thirteen health groups formed the political action committee called “Healthy Kids, Healthy Montana,” (HKHM) and filed a petition with the Secretary of State's Office on March 11, 2004 for a ballot initiative that would ask voters to increase cigarette taxes by \$1 (from 70 cents to \$1.70). As a political action committee, HKHM would be able to accept contributions for the campaign to get the “2004 Healthy Kids, Healthy Montana Tobacco Tax Increase Act,” or I-149, passed in the November 2004 election. The average cost of a pack of cigarettes in Montana in 2004 was \$4.01 (the average retail price in the U.S. was \$4.32<sup>282</sup>). I-149 would bring the total cigarette tax to \$1.70 per pack, and would raise taxes on other tobacco products from 25% to 50%. If passed, Montana's cigarette tax (at \$1.70) would be fourth highest in the nation, behind New Jersey (\$2.05), Rhode Island (\$1.71), and New York City (\$3.00).<sup>283-285</sup>

The revenue created by I-149 would be split among health programs, though none would go to tobacco control programs. The initiative earmarked 40% of the tax revenue for CHIPs and the creation of a new prescription drug program for children, seniors, the chronically ill and disabled; 47% would go to the state's general fund; and the rest would be divided according to the established division for already existing tobacco taxes (8.3% for state veteran's nursing home and 4.3% for the state's long term building program). To qualify for the November 2004 election, supporters needed to gather the signatures of 20,510 voters.<sup>285, 286</sup>

Tobacco control advocates made a conscious decision not to pursue tobacco control funding through I-149 because such funding was already dictated by I-146 and diverted by the legislature. As explained by Dick Paulsen of the ALA, the choice not to pursue more tobacco control funding was made because

We [the health groups] already had I-146 just sitting there. So we said as a group [HKHM], we still support I-146. We're not going to come back and ask for that money a second time from the voters. They've already given it to us once, we just have to make the legislature obey the law and so we asked for I-149 to be part of health... And with that, we came up with this funding mechanism and so we sold that to the state of Montana. And we also knew that they would like those - because now we were talking to seniors. If you're a senior, here's why you want to vote for

this. If you have children, here's why you want to vote for this. If you're a small business, here's why you want to vote for this.<sup>96</sup>

The Secretary of State and State Attorney General approved the format of the I-149 petition on April 22, 2004. Under the approved language, I-149 would raise \$38.4 million for new health care insurance and Medicaid initiatives; an additional \$400,000 for state buildings; \$6 million for the general fund; and \$2 million in funding for the state veteran's nursing homes, which was identical to its previous funding level. The necessary signatures to place I-149 on the November 2004 ballot would have to be collected by June 18, 2004.<sup>287</sup>

In the months before the I-149 gained approval for the November 2004 ballot, supporters were reaching out through local venues like town meetings to promote the initiative. For instance, Dr. Patrick Cobb, an oncologist in Yellowstone County, was one of four speakers at the Tobacco Free Yellowstone community forum at the Mansfield Health Education Center on May 18, 2004, where the meeting focused on the hazards of secondhand smoke and strategies for discouraging people from smoking. Cobb and the four other speakers were promoting the benefits of I-149.<sup>288</sup> Public support for I-149 remained strong throughout the months of the signature drive. In a telephone survey of 625 voters from May 24-26 conducted by Mason-Dixon Polling & Research of Washington, D.C., for Lee Newspapers, 61% supported the initiative, 29% were opposed to it, and 10% were undecided (with a margin of error of 4%).<sup>289</sup>

On the June 18, 2004 deadline, HKHM advocates told reporters that they had gathered about 34,000 signatures.<sup>290</sup> After I-149 had officially qualified for the ballot, the tobacco industry began to speak out against it in the press. Jamie Drogen, spokesperson for the Philip Morris USA stated on June 18, 2004 that “excessive excise taxes” can have unintended consequences, such as an increase in illegal reselling of cigarettes from lower tax states and the sale of counterfeit cigarettes.<sup>291</sup> That message was repeated in a March 2004 *Billings Gazette* article by Brendan McCormick, another spokesperson for Philip Morris.<sup>286</sup> The tobacco industry's public statements against I-149 would be followed by a lawsuit seeking to remove the initiative from the ballot.

### ***Lawsuit Against I-149***

On July 26, 2004, opponents of I-149 filed suit in the Montana District Court claiming that the initiative was unconstitutional, and therefore had to be removed from the November 2004 ballot. Plaintiffs in the suit (Montana Veterans of Foreign Wars, The American Legion of Montana, Montana Petroleum Marketers and Convenience Stores Ass., Montana Wholesale Distributors Ass., U.S. Smokeless Tobacco Co., and R.J. Reynolds Tobacco Co.) claimed that I-149 was unconstitutional because it was confusing, jeopardized funding for the Montana's veteran's homes, appropriated money raised by the proposed tax in violation of a power reserved for the Legislature, and that it contained multiple subjects.<sup>292</sup>

The Associated Press reported that Philip Morris (PM) was also helping to fund the lawsuit, although it was not an actual plaintiff in the case.<sup>293</sup> In addition to this reported funding by PM, the non-tobacco-company parties in the suit were ally groups that had previously worked with PM. PM's internal “2001 State Coalition Status Report,” lists all of the organizations in

Montana that were part of PM's "Field Action Team" in Montana as of March 12, 2001. This list of 27 organizations includes the American Legion, the Veteran of Foreign Wars, the Montana Wholesalers and Distributors Association, and the Montana Petroleum Marketers Association.<sup>80</sup>

In response to the lawsuit, proponents of I-149 made accusations to the local press that tobacco companies were using "dirty tricks" against the ballot measure. Dr. Richard Sargent of Helena, who served as treasurer for the HKHM political action committee, stated to the press that "[b]ig tobacco has a history of using front groups, misleading information and their deep pockets to prevent public health measures such as I-149."<sup>294</sup> Dick Paulsen, Executive Director of ALA of the Northern Rockies, commented, "[a]s a veteran and someone who works daily to addressing the death and disease from tobacco, I want all Montanans to know that they have just been lied to again by tobacco companies and their supporters" and that the tobacco companies were "trying to scare the same veterans that this initiative will help."<sup>294</sup>

State Attorney General Mike McGrath and Solicitor Brian Morris filed a written argument defending the state-approved ballot measure on August 19, 2004. The state attorneys countered the claims made in the suit, asserting that veterans' homes would continue to receive \$2 million in tobacco tax revenues each year. The state attorneys pointed out that the initiative did not appropriate any money, but would only earmark tax revenues for specific purposes that would have to be appropriated by the legislature. The state attorneys furthermore argued that the initiative's purposes were simple to understand, and that the initiative had only one subject, an increased cigarette tax and the revenues created from it.<sup>295</sup> Oral arguments before Judge Dorothy McCarter of the Montana District Court were held August 26, 2004, where both parties repeated the positions stated in court filings.<sup>296</sup>

On August 31, 2004, Judge McCarter upheld I-149, rejecting all of the claims against the initiative itself, thus finding it constitutionally valid. In upholding the initiative, Judge McCarter specifically found that the measure does not improperly appropriate money, since none of the revenues could be spent without the legislature's authorization. Judge McCarter additionally found that the initiative did not contain multiple subjects, since it dealt only with the general issue of the tobacco tax, and that the initiative did not affect funding for state's veteran's homes.<sup>297</sup>

While not finding any legal deficiency in I-149, Judge McCarter did rewrite the summary explanation of I-149 that would appear on the November 2004 ballot, which was originally prepared by the State Attorney General's Office. Judge McCarter felt that the summary explanation needed to more clearly explain that certain programs would be funded with increased tax revenue only if approved by the legislature, and that the statement of purpose in the summary needed to accurately reflect how much of the money would go to certain government programs.<sup>297</sup> The summary of I-149, as re-worded by Judge McCarter, read as follows:

This initiative increases tobacco taxes by approximately 140 percent to \$1.70 per pack of cigarettes, 85 cents per ounce of moist snuff, and 50 percent on all other tobacco products, and changes the use of these revenues. The initiative reserves approximately 45 percent of these revenues for: additional enrollment in the children's health insurance program; increased Medicaid services and provider rates; and, if created by the Legislature, a supplemental need-based

prescription drug program for certain groups, and programs to help small businesses provide employee health insurance. Remaining revenues are allocated to state veteran's nursing homes, the building fund, and the general fund.<sup>298</sup>

In reacting to Judge McCarter's upholding of I-149, health advocates felt confident that the initiative would go on to prevail with voters, despite the tobacco industry's desire to appeal the case. Dr. Sargent told the press that "I think the tobacco industry realized they were going to lose at the ballot box, so they turned to the jury box," and that "it's a fairly desperate ploy by them to do to that. I take that as a very positive sign."<sup>299</sup> Although Helena lawyer Kati Kintli representing the plaintiffs indicated an intention to appeal the case, state solicitor Brian Morris predicted that the State Supreme Court was not likely to hear any appeal before the election, since the court would be forced to move the case ahead of all other pending cases.<sup>299</sup> On September 2, 2004 plaintiffs did request that the State Supreme Court hear an appeal of the case and that an expedited schedule be set so the case could be heard before the November 2, 2004 election.<sup>300</sup> As predicated, the Supreme Court denied review of the case.

With the legal challenge now resolved, the campaign for I-149 was still finding strong public support as campaigners continued to focus their efforts on community events. A Lee Newspapers poll of 625 voters conducted by Mason-Dixon Polling & Research between September 20-22 showed that 59% supported I-149, 30% opposed it, and 11% were undecided (with a margin of error of 4%).<sup>301</sup> Campaigners for the initiative continued to promote the benefits of an increased cigarette tax to their own communities. For instance, Margit Baake, a campaigner for HKHM, held a news conference at the Bozeman Public Library, where she unplugged a giant mock-up box of cigarettes filled with 2,700 balls, each one representing the life of a child that would be saved in one year from an increased cigarette tax. According to the *Bozeman Daily Chronicle*, approximately 300 Montana physicians were endorsing I-149 around the state, while opposition to I-149 was relatively weak.<sup>302</sup>

Opposition to I-149 was unorganized and scarce. Dick Paulsen of ALA, in a 2005 interview, observed that there was much less opposition to the I-149 effort than was expected: "I mean, we were surprised. Part of it, we were thinking, is they might have too many other things going on, but at the same time, perhaps they did their own polling - because they do their own. We're still surprised they didn't put more money into it."<sup>306</sup> Although official campaign finance reports for 2004 were not available when this report was written, tobacco control advocates stated there was no major organized media campaign against the statewide initiative, and that opposition was limited to a few individual bar and tavern owners, legislators, and lobbyists. The argument against I-146 printed in the 2004 Voter Information Pamphlet was prepared by Representative Jack Ross (R-Stillwater), Ronna Alexander (an Executive with the Montana Petroleum Marketers Association) Dan Antonietti (a representative for Veterans of Foreign Wars) and Mark Staples (lobbyist for the Montana Tavern Association).<sup>303</sup> As previously discussed in this report, the Montana Petroleum Marketers Association, the Veterans for Foreign Wars, and the Montana Tavern Association (MTA) had all been members of Philip Morris' state coalition in the late 1990s and into 2001, and the MTA had received financial contributions from the tobacco industry in the care of Mark Staples.<sup>80, 304, 305</sup>

I-149 was passed by voters on November 2, 2004, with 66% voting in favor of the initiative and 32% voting against it. In commenting to the press about the health advocate victory, Dr. Richard Sargent stated, “[t]he message here is that Montana is no longer Marlboro country.” Effective on January 1, 2005, cigarette taxes would increase from 70 cents to \$1.70 per pack, while tax on snuff tobacco would increase from 35 cents to 85 cents an ounce, and taxes on other tobacco products would increase from 25% to 50% of the wholesale prices.

## **LOCAL ORDINANCES**

The tobacco lobby has gained political power on the state level across the country through a sophisticated system of policy issue development, and with influential lobbying funded by its substantial financial resources. This system of policy making operated almost invisibly in state legislatures throughout the 1990s, and became a permanent fixture of domination and influence on state government, state legislators, and tobacco control policy.<sup>306</sup>

Local ordinances are often more effective methods of enacting public health regulations, since the tobacco lobby has less influence on local policymakers, who are more responsive to their constituents than to tobacco industry lobbyists and campaign contributions.<sup>306, 307</sup> During the first half of the 1990s, there was a significant increase in local tobacco control ordinances, and by the end of 1995 approximately 1006 communities had enacted a local tobacco control ordinance.<sup>308</sup> The tobacco industry has continued to fight local smoke-free-ordinances, both by speaking through front groups and by getting local ordinances preempted by state law.<sup>306-308</sup> In 1998, communities in Montana began taking the no-smoking issue into their own hands, but would find the tobacco industry engaged in familiar strategies to take away such local control.

### ***Missoula***

Missoula was the first city in Montana to pass a smoke-free ordinance. The idea for an ordinance was originally proposed by the Missoula City-County Health Department (MCCHD), as part of its “FY 1998 MCCHD Tobacco Control Plan,”<sup>309</sup> which was presented by Greg Oliver and Holy Cummins of the Department’s Health Promotion Division with the goal “to reduce the amount of harm and addiction caused by a product that when used as intended leads to disease, disability and death.”<sup>310</sup> At the December meeting, Health Department Director Ellen Leahy, along with Greg Oliver and Holy Cummins of the Health Promotion Division, explained the Tobacco Control Plan to committee members.<sup>310</sup>

At the December 3, 1997 Public Health and Safety Committee meeting, the committee discussed the creation of regulation to control second-hand smoke. Oliver and Leahy stated that the main concern behind the proposal was involuntary exposure to second-hand smoke, which they characterized as a quality of life issue. Out of the ideas discussed at this meeting, the MCCHD would draft a smoke free ordinance that would be released for public comment in September 1998.<sup>310</sup>

At least two tobacco industry ally groups were aware of the December 3, 1997 meeting. The Montana Tavern Association (a trade organization formed in 1937) alerted the Montana

Wholesale Distributors Association (a state association of the American Wholesale Marketers Association - a trade organization representing convenience store product distributors) about the Public Health and Safety Committee discussion, and showed concern over the possibility of future smoke-free regulations. A January 28, 1998 letter from Marie Durkee, Executive Director for the Montana Tavern Association (MTA), to Mark Staples, lobbyist for the Montana Wholesale Distributors Association and the MTA, included with it a copy of the minutes of the Public Health and Safety Committee meeting on December 3, 1997 and a copy of the FY1998 MCCHD Tobacco Control Plan.<sup>311</sup> In reference to the MCCHD Tobacco Control Plan, Durkee wrote: "See p. 2, 'Secondhand Smoke - Objective #2 - The goal of the initiative is to prohibit smoking in all public places.'" Durkee then noted that the "prohibiting smoking" objective was "recited or implied throughout" the plan.<sup>311</sup> The letter, furthermore, implies an intent to keep any opposition to smoke-free ordinances invisible, as Durkee writes, "You and I know they [the Health Department] could speed up the process if they smell opposition."<sup>311</sup>

Both the Montana Tavern Association and the Montana Wholesale Distributors Association have financial ties with the tobacco industry. A December 17, 1999 Montana Tavern Association (MTA) invoice signed by Mike Philips, Regional Director of State Government Relations at R.J. Reynolds, shows that R.J. Reynolds gave, in the care of Mark Staples' law office, \$1000 to the MTA in 1999.<sup>305</sup> Similarly, a November 29, 1999 invoice from the Montana Wholesalers Association (MWA), also signed by Michael M. Phillips of R.J. Reynolds (and indicating Mark Staples as Executive Director), shows that MWA received \$2000 from R.J. Reynolds in 1999. The Montana Wholesalers Association invoice also indicates that R.J. Reynolds was a "Gold Level" Associate Member, the second highest level of associate member categories listed.<sup>304</sup>

In addition to the direct financial contributions from R.J. Reynolds in 1999, the Montana Tavern Association had served as a tobacco industry ally groups since at least 1995. A February 16, 1995 letter from Ted Lattanzio, Regional Director of Government Affairs at Philip Morris, to Marie Durkee, Executive Director of the MTA, stated: "We are pleased to be able to respond to your request for assistance to make it possible for you to appear at the OSHA [Occupational Safety and Health Administration] hearings to present your views on the proposed rules"<sup>312</sup> (In April of 1994, OSHA proposed federal smoke-free regulations for the workplace). The letter went on to tell Durkee what day she would testify at the OSHA hearings before the Department of Labor, and that she was scheduled to stay at the Park Hyatt in Washington, D.C.. The letter also stated that a limousine would take her to and from the airport, and that all meals at the Hyatt would be included. Lastly, the letter instructed Durkee to call Lattanzio's room upon her arrival so she could be updated on the hearing schedule.

In addition to testifying for the tobacco industry at government hearings, Durkee continued in 1996 to make her arguments against smoke-free laws in public forums to tavern owners in Montana. At a December 11, 1996 news conference held in Helena, MT, Marie Durkee announced the results from a survey of owners and managers of restaurants and bars in Montana.<sup>313</sup> Durkee, who introduced herself as the Executive Director of the Montana Tavern Association, stated that "85 percent of managers and owners of bars and taverns and 42 percent of those who own or manage restaurants, predict economic losses if a pending national

workplace smoking ban is implemented...” by the federal government.<sup>313</sup> Durkee went on to tell the audience that

The survey demonstrates that OSHA's rule will have a dramatic effect on employment in the hospitality industry in Montana. While some establishments will be forced to close altogether, the real impact from this proposal will be on individual bartenders, wait staff, cooks and dishwashers. Many of them will undoubtedly lose their jobs. Furthermore, the impact won't be limited to just bartenders and restaurants – food and beverage distributors, cleaning services, even landlords who collect rents based on sales, will feel the bite of this over-burdensome regulation. Additionally, I think it is safe to say that many small businesses both inside and outside the hospitality industry will be adversely affected by this well intentioned by fundamentally flawed regulation.<sup>313</sup>

At the end of the news conference, Durkee stated that “[a]n unrestricted research grant from Philip Morris made our research possible,” and that the October 1996 statewide survey conducted by Roper Starch Worldwide interviewed 303 individual owners, operators, and managers, and had a margin of error of plus or minus 8 percentage points.<sup>313</sup> Such attempts to manipulate the hospitality industry through the myth of lost profits is a common tobacco industry strategy.<sup>69</sup>

Thus, even before the Missoula Health Department was discussing a proposed smoke-free ordinance in 1997, the Montana Tavern Association, beginning as early as 1995, had been telling tavern owners, managers, and workers that smoke-free laws would be disastrous to their businesses. It is not surprising, then, that when the Missoula City-County Board of Health (MCCHD) released its proposed smoke-free ordinance in September 1998 for public comment, many bar owners spoke out against it, fearing their livelihoods were at stake. According to the September 20, 1998 edition of *The Missoulian*, Missoula representatives of the Montana Restaurant Association and the Missoula County Tavern Owners Association were vigorously opposed to the proposal.<sup>314</sup>

The draft ordinance would be amended several times before it was finally approved. When the draft proposal was first released in September 1998, it exempted places where a beverage liquor license is used (allowing them to sell hard liquor) and areas where 11 or more gambling machines were operating, with violations punished by a \$100 fine. The draft ordinance also extended five miles out from the city limits, thereby invoking extraterritorial authority (the authority by the local health department to create rules that extended beyond city limits) to protect public health. As such, the Health Board and the county commissioners would need to approve the ordinance in addition to the Missoula City Council.<sup>314</sup>

Almost immediately, the debate over Missoula's smoke-free ordinance became framed as economics versus public health. At the first public hearing regarding the smoke-free law on September 22, 1998, testimony from those representing businesses claimed that it would bring unfair economic hardship for tavern owners (who didn't sell hard liquor), violated people's freedom of choice, and was unenforceable. On the other side of the debate, health advocates focused on the dangers of smoking, and called the economic disaster claims a product of tobacco industry strategy. Dennis Alexander, Executive Director of the American Lung Association of the Northern Rockies, told the MCCHD that “[t]hey [the opponents] reframe [sic] it by saying it's an economic issue, a matter of civil liberties,” and added, “but, believe me, this is a public health



issue, and nothing but a public health issue.”<sup>315</sup> The Health Board heard 3 hours of testimony, with 21 people supporting the testimony and 17 against it.<sup>315</sup>

At the next public hearing before the MCCHD on October 15, 1998, the board of health addressed the objections of business owners who complained that the exemption would create an unfair advantage for establishments that were exempt. Health Board members responded to the concern by suggesting removing the exemptions. Board member Dr. Hal Braun stated that “[m]y inclination would be to ask the [health board] staff to draft a smoke-free Missoula ordinance that includes all public places.” Board Chairman and Missoula attorney Bill Rossbach added that “[j]ust dealing with logic and economics, if there's not place to go and smoke, then there's a level playing field.”<sup>316</sup>

In response to the Health Board recommendation of an exemption free ordinance at the October 15, 1998 meeting, tavern business owners made their own proposal for “fairness.” Kevin Head, owner of the Rhino bar in Missoula, presented the board with the Missoula County Tavern Owners Association's counterproposal, which called for signs that indicated to customers what the smoking status of an establishment was. Head explained that “a person could look on the doors and find out,” and that “the idea behind it [was] to provide a level playing field with signs”<sup>316</sup> (this proposal was similar to the Montana Clean Indoor Act of 1979 which mandated signs, though that law exempted some establishments). Head would become the main spokesperson for the Missoula County Tavern Owners Association, which would spearhead the opposition to the smoke-free ordinance.<sup>316</sup>

On November 19, 1998, the Missoula City-County Health Board unanimously passed the smoke-free ordinance, which would require all indoor public places and workplaces to be smoke-free. The ordinance no longer contained any exemptions for particular establishments, though it did provide a procedure by which business owners could apply for variances in situations unique to their establishments, which would be considered on a case-by-case basis. In explaining the reasoning behind allowing for the procedure, board chairman Rossbach explained that “there may be unique sets of facts where someone is going to have a hard time dealing with this.”<sup>317</sup> The city would next have to be approved by the Missoula City Council, and then by the Missoula County Commission if the ordinance were to be applied to a 5-mile radius outside the city.<sup>317</sup>

When the ordinance reached the city council, hospitality industry owners and employees requested that exemptions be put back into the ordinance. At the Missoula City Council Meeting on January 27, 1999, the Missoula County Tavern Owners Association (MCTOA) proposed an exemption that would allow owners of liquor licensed establishments to get written consent from 51% of their employees, without threat or intimidation, to apply to allow smoking in their.<sup>318</sup> At the March 17, 1999 City Council Committee meeting, employees of truck stops presented a petition of 216 signatures (including out-of-state customers) asking for an exemption of truck stops in the ordinance. Truck stop employees reasoned that “smoking truck drivers... are more than willing to drive an extra 60 or more miles to a different town... Missoula-area truck stops will become economically unviable.”<sup>319</sup> At both meetings, health advocates, including members of the health board that approved the smoke-free ordinance draft, reminded the city council that public health was the main concern behind the ordinance.<sup>318, 319</sup>

On April 7, 1999, the Missoula City Council announced it had arrived at a compromise version of the smoke-free ordinance, though a final draft had not yet been written. City Council representative Scott Morgan, a member of the Council's Public Safety and Health Committee, said the Council softened its proposed ordinance because it listened to diverse interests. The Council laid out a general outline of what types of businesses would be exempt, though indicated that the extent and details of some of the exemptions had not been finalized (such as for truck stops). The businesses to be exempted according to the city council were<sup>320</sup>:

- businesses that use a liquor license routinely to serve liquor where food service is incidental - for instance, a bar or tavern that serves peanuts and popcorn; the exemption is for the bar only and would not apply to an area where meals are served in the same business.
- truck stops
- retail tobacco stores
- private functions not open to the public
- stage, drama, and musical performances where smoking is part of the production; and
- newly constructed separately ventilated smoking rooms.

After the compromise ordinance was presented, a public hearing was held for comments on May 10, 1999. In response to the compromise ordinance, health advocates and health professionals lobbied for a more comprehensive smoke-free ordinance. According to the May 11, 1999 edition of *The Missoulian*, “at a public hearing that lasted more than two hours, the council heard from pediatricians, cardiologists, a cancer specialist, pulmonary specialists, and an ear, nose and throat specialist who said that secondhand smoke in any quantity is dangerous to the health of those who breath it and to their unborn babies.”<sup>321</sup> However, *The Missoulian* also reported that about one-fourth of those testifying at the May 10, 1999 hearing opposed the ordinance, citing the right of business owners to decide their own policies and the feared economic consequences of a smoking ban.<sup>321</sup>

The debate over the ordinance not only showed a conflict between public health advocates and the tavern owners, but a division between tavern owners and restaurant owners as well. On May 19, 1999, City Council representative Myrt Charney introduced an amendment that would allow restaurant owners to stay 100% smoking allowable, as well as allow for smoking in a restaurant that had two separate dining areas. Charney's amendment would also require that such restaurants post signs to warn the public. Such policies are consistent with PM's Accommodation Program campaign, developed in 1989 to promote the concepts of tolerance for smoking as an alternative to smoke-free establishments. One variation of the accommodation program are “Red Light Green Light” laws, which only establish minimum restrictions and require signs be posted to inform patrons whether smoking is allowed. Such policies have great appeal to local lawmakers who want to appear as though they are addressing the smoking issues without actually having to create effective new health law.<sup>69</sup> In Missoula, the proposal was rejected by both health advocates, who pointed out that the amendment would turn the smoke-free ordinance into an accommodation ordinance, and the Missoula Tavern Owners Association, who feared the additional changes would endanger their own exemption from the law. The Association's attorney, Ron MacDonald, stated that “[m]y people have worked real

hard to find a middle consensus,” and that “...if they add amendments that keep it from passing, we're opposed.”<sup>322</sup>

On May 24, 1999, the Missoula City Council passed the ordinance by a vote of 9 to 3, after rejecting Charney's amendments to exempt restaurants. Although Charney remained a vehement opponent of the ordinance and called it “a monstrosity,” members of the health advocate community and the Missoula Tavern Owners Association expressed satisfaction with the compromise ordinance. Kevin Head stated that “the Tavern Association is glad the ordinance passed as written,” and that “as it now stands, it's the best compromise we could have hoped for.”<sup>323</sup> Linda Lee, an employee of the American Lung Association of the Northern Rockies (who would also be appointed by Gov. Racicot to the Advisory Council on Tobacco Use Prevention) stated that “I'm really happy,” and that “it's a really important step to protect the public from carcinogens and toxins.”<sup>323</sup>

As approved by the Missoula City Council on May 24, 1999, the following would be exempted under the ordinance<sup>324</sup>:

- Separately ventilated smoking rooms.
- Private functions, parties, or gatherings not advertised or accessible to the general public.
- Retail tobacco stores.
- Stage, drama or musical performances when smoking is part of the production.
- Businesses that hold a liquor license are exempted in areas in the business primarily used for liquor service and where food service is secondary. A business serving liquor established at a location after the first effective date of this ordinance must use separately ventilated smoking rooms if the employer chooses to allow indoor smoking.
- Areas in truck stops used for liquor or food service, or as trucker's waiting lounges. A truck stop established at a location after the first effective date of this ordinance must use a separately ventilated smoking room if the employer chooses to allow indoor smoking.

Since the Missoula ordinance used “extraterritorial powers” under state law to extend the ordinance in a 5-mile radius outside city limits, approval of the county commissioners and the county health board was needed. However, approval of the county commissioners was only needed for the “extraterritorial” aspect of the bill, and would not be allowed to make any amendments to the ordinance. Thus, the county commission could only vote “yes” or “no” as to whether the ordinance could be enforced outside city-limits.<sup>325</sup> On June 9, 1999, the Missoula County commissioners approved the ordinance unanimously, with little discussion and no debate. Commissioner Barbara Evans explained the strong support by the commission by stating “[i]t makes no sense to me that folks inside the city have a different set of rules than those outside the city,” and that “[p]eople's health outside the city is just as important as those inside.”<sup>326</sup>

The ordinance was then returned to the Missoula City-Country Health Board for final approval on June 17, 1999. Although the Health Board's vote was unanimous, members expressed reluctance over the exemptions. Board member Dr. Hal Braun commented, “I think we all realize how difficult it is to vote for a public health measure that ignores the people most

at risk,” explaining that “[t]he employees of those places [taverns] are probably the ones who have the least option to change jobs.”<sup>327</sup> Long time ordinance proponents Ellen Leahy, Director of the MCCHD and Linda Lee of the ALA did express strong support for the ordinance. Linda Lee stated, “[w]e strongly recommend that you approve this,” and that “[i]t's a very strong health protection. Thousands of workers will be protected, as well as patrons in restaurants.”<sup>327</sup> The smoke-free Missoula ordinance became effective in workplaces on September 15, 1999, and effective in restaurants on December 1999.

### ***Tobacco Industry Continues to Spread Economic Danger Argument as the Number of Smoke-free Ordinances Increases***

The tobacco industry continued to fight smoking ordinances by pushing its economic disaster claims through ally groups and front groups, which carried the claims to the hospitality industry. According to the October 1999 issue of the *Montana Tavern Times* (an industry news paper affiliated with the Montana Tavern Association, which “supplies copy/editorial support”<sup>328</sup>), a seminar entitled "Let's Clean the Air... Don't Let Smoking Bans Burn Your Business" was presented by Mary Ann Latko and Beverly Swanson at the Montana Tavern Association annual convention in 1999. The article described Mary Ann Latko as an "environmental engineer," and Beverly Swanson as "a California bar owner and active opponent of tobacco ban legislation.”<sup>329</sup> What was not mentioned in the article, and presumably not disclosed at the seminar, was that both Latko and Swanson had ties with Philip Morris.

Mary Ann Latko was part of the staff at Chelsea Group Ltd.,<sup>330</sup> a business consulting firm specializing in consulting major corporations on regulatory strategies relating to indoor air quality. The 1990 “Philip Morris Worldwide Regulatory Affairs” report prepared by Chelsea Group Ltd. shows that the Chelsea Group provided strategic guidance on indoor-air-quality and ventilation technology issues.<sup>331</sup> As stated in the Chelsea Group report: “Chelsea Strategic tracks the regulatory and standards actions of major global organizations across EHS [environmental, health, and safety] and IAQ [indoor air quality]. Our clients use this information to gain a competitive edge in the global marketplace.”<sup>331</sup> The report also indicated that Chelsea Group Ltd. had advised Philip Morris in preparing alternatives to the proposed 1994 OSHA regulation, and in developing its arguments in the American Society of Heating, Refrigeration, and Air Conditioning Engineers (ASHRAE) Standard 62 debates in the late 1990s (the tobacco industry and its allies had aggressively lobbied ASHRAE - an international organization which develops standards for heating, ventilation, refrigeration, and air conditioning - to develop standards based on “comfort” that specify ventilation levels related to the amount of smoking, and which were therefore consistent with indoor smoking<sup>24, 332</sup>).

Further connection is shown between Philip Morris and Latko's employers in a November 1, 1993 contract agreement between Philip Morris and Chelsea Group Ltd. The agreement states that Chelsea Group was being paid by Philip Morris to “...develop, demonstrate and report on a valid protocol for evaluating a variety of types of buildings and recommending methods for accommodating smokers and non-smokers in them... for the Accommodation Program...”<sup>333</sup>, the Philip Morris program to promote ventilation as an alternative to smoke-free policies.<sup>69</sup>

The October 1999 *Montana Tavern Times* article reported that Latko, at the MTA convention, provided “solutions” to inadequate indoor air ventilation by discussing “bringing in enough outdoor air, the use of high-quality air filtration, and the knowledgeable management of air flow from area to area as vehicles to accommodate all customers.”<sup>329</sup> The article also characterized Latko as highly qualified to give such advice, describing her as “a seasoned expert on ventilation or IAQ (Indoor Air Quality)...” and “[a] trained environmental engineer and an acknowledged expert on ventilation.”<sup>329</sup> The *Montana Tavern Times* article made no mention of her employment by Chelsea Group Ltd., or her work as a paid corporate consultant on indoor air regulations for the tobacco industry.

Beverly Swanson, the other presenter in the “Let's Clean the Air... Don't Let smoking Bans Burn Your Business” seminar at the 1999 MTA convention (and who had also been an active public opponent of California's smoke-free laws in 1996 and 1997<sup>334, 335</sup>), was also working in coordination with Philip Morris to fight smoke-free ordinances nationally. A June 1998 internal PM planning report, “PM USA Media Relations Program - Places,” indicates that a media campaign was being put into place with the goal of “assuring pleasant smoking places for adults who chose to smoke...”<sup>336</sup> As part of the “Places” campaign strategy, one of the stories that would be “pitched or placed” was the following: “Living with the Ban – Interview with Beverly Swanson which would feature key leanings [sic] from the bar ban in California and how business has been effected as a consequence.”<sup>336</sup> In addition, a July 20, 1998 “Places Media Relations Plan Timeline of Activities,” which “identifies story ideas that will be pitched to targeted trade and mainstream media in support of the Places program,” indicated that Swanson's “storyline pitch” would be sent to certain targeted media (Nation's Restaurant News, Restaurant Business, Beverage Journal, and Nightclub and Bar) in September 1998.<sup>336</sup>

In reporting on Swanson's presentation at the MTA convention, *The Montana Tavern Times* article wrote, “leaning heavily on her personal experiences in California, Swanson told her listeners that 'smoking bans will not harm your business, it will kill it.’”<sup>329</sup> The article went on to say that

Swanson pointed out that the major results of the tobacco ban have been job losses, business closings, chaos, mom-and-pop operations being driven out, criminal citations and forcing the small bars into civil disobedience as their only salvation in saving their business.

Embittered by her experiences, Swanson has come to the conclusion that the only practical answer is adequate ventilation...<sup>329</sup>

*The Montana Tavern Times* article made no mention of Swanson's previous opposition to California's smoke-free laws, or to her involvement in the “PM USA Media Relations Program - Places.” The article indicates that “[a]ccording to executive secretary Marie Durkee, the goal of the state association is to set up these seminars in concert with the various county organizations.” The article then gives contact information for the MTA headquarters in Helena with a stated purpose: “[i]n order to give your local organization a foot up on the smoking issue.”<sup>329</sup>

## *Great Falls*

Even though the tobacco industry spread its economic disaster argument to tavern owners throughout Montana, more local ordinances would be passed. In Great Falls, the economic fear argument would play a significant role. This was especially true because Great Falls city officials were more concerned with avoiding conflict and finding compromise than passing a comprehensive smoke-free ordinance. As a result, the Great Falls ordinance resulted in no meaningful change in restaurants and bars, allowing restaurants to declare their smoking status on an individual basis.

In January 1998, the American Lung Association conducted a survey of 376 voters in Cascade County (in which Great Falls was located), which found that 79% favored a smoking ban in public places to protect children, 74% favored prohibiting smoking in restaurants to protect employees and patrons, 78% percent agreed smoking restriction in public would set a good example for children, and 47% favored banning smoking in bars and taverns.<sup>337</sup> In November 1998, the Great Falls smoke-free ordinance was proposed to the city commission by members of the American Cancer Society, American Lung Association and other local tobacco control advocates, who brought with them a petition in support of the ordinance with over 1,000 signatures on it.<sup>338</sup> As originally proposed, the ordinance would ban smoking in all indoor public places and workplaces, but would exempt casinos, bars, and any restaurant with a liquor license.<sup>339</sup> Penalties would be a \$100 fine for the first violation, \$200 for a second violation within a year and up to \$500 for subsequent violations.

The main visible opposition to the ordinance came from members of the Great Falls Tavern Association who, in speaking to the city council on January 5, 1999, asked that the entire ordinance be rejected.<sup>340</sup> Argument against the ordinance focused on allowing owners to determine the smoking status of establishments on their own. Opposition testimony also came from owners of bowling alleys, which served alcohol but would not be exempt under the ordinance. Opponents presented their own petition against the ordinance, with 2,416 signatures on it.<sup>341</sup>

Following the proposal for an ordinance by health groups and the opposition to it expressed by business owners, the City Commission directed staff to prepare a draft ordinance. The attitude of the City Commission from the beginning of the draft process shows a desire to avoid conflict. According to the Journal of Commission Work Sessions, March 16, 1999, the city commission gave a set of criteria to be used in drafting the ordinance, including the condition that “it had to be tailored to community attitudes; and that it could not cause undue burden on business.”<sup>341</sup> Thus, city officials were already prioritizing the avoidance of too much criticism from local businesses over the protection of public health.

The city commission held public hearings regarding the ordinance on June 1, 1999. Among the 20 individuals who spoke against the ordinance, 3 of them claimed the proposed ordinance was unfair to 24-hour restaurants, which they claimed would lose night customers to casinos where they could eat and smoke. A total of 25 individuals testified in favor of the ordinance, including 4 doctors and Art Dickhoff, who also represented the American Cancer

Society in debates regarding allocation of MSA funds.<sup>342</sup> After hearing nearly 2 hours of arguments from both sides, the commission decided to postpone a final decision until July 6, 1999.<sup>343</sup>

Though no reason was stated for the delay, it seems likely that the city commission was hesitant to make a ruling on a controversial issue that would draw criticism from either side. Indeed, before the next scheduled committee meeting, it was reported by the *Great Falls Tribune* that the committee acted in response to public sentiment, amending the ordinance to exempt family-owned and operated businesses that had no non-family employees. In the article, Assistant City Manager Cheryl Patton stated, “[t]here were just a few items from the public hearing that the commissioners agreed they wanted to address.”<sup>343</sup>

The city commission's hesitance to make a final decision on the smoking ordinance was again evidenced at its July 6, 1999 meeting. Requests from business owners prompted commission members to exempt 24-hour restaurants from the smoking ordinance. The commission furthermore considered an exemption for non-profit organizations that rent out facilities for events, such as the Knights of Columbus, which feared losing rental business. The start date of the smoking ordinance was then set for September 1, 1999, which the commission reasoned gave them enough time to consider more possible amendments.<sup>344</sup> In response to the July 6, 1999 actions, Alex Philip, representing the American Lung Association, told reporters that “[e]xempting 24-hour places is wrong,” and that “...if they open this up to other exemptions, it makes for a much more complicated, hard-to-enforce ordinance.”<sup>345</sup> Even so, the commission then approved the amendment exempting non-public facilities that are typically rented for private parties on August 3, 1999.<sup>344</sup>

At the August 17, 1999 city commission meeting, another delay of implementation was requested by Cherry Loney, the City Health Officer, to November 17, 1999. Loney explained to the commission that the Health Department needed more time to research and address questions from the public regarding the ordinance, which were higher than usual because of the “spotlight of controversy shining on this ordinance.”<sup>346, 347</sup> Again, this additional delay seemed to be an attempt to avoid public controversy. The *Great Falls Tribune* noted that although the stated reason for the delays were to study the law's enforcement and application, it would also allow the commissioners to make more amendments.<sup>346</sup>

Health advocates responded to the ordinance's delays and the exemptions through the press. Alex Philip from the American Lung Association, who had become the main spokesperson for tobacco control advocates supporting the local ordinance, explained that the plan for health advocates was “to go after the exemption - and that's also our suggestion to anybody else: Call the city commissioners and point out that the exemptions in the ordinance are a problem.”<sup>347</sup> The exemptions had also made an ally out of some of the owners of non-exempt restaurants, who asked the City Commission at the hearing to remove all the exemptions, arguing that the exemption for 24-hour restaurants were unfair.<sup>348</sup>

The November 1, 1999 edition of the *Great Falls Tribune* reported yet another delay for the implementation of the ordinance, this time until January 31, 2000. The article reported that

Assistant City Manager Cheryl Patton informed the press that the delay was recommended because a “consensus committee” was set up by the City Commission to come up with an agreed upon version of the ordinance, and needed more time to come to a consensus. The committee was made up of members of the health advocate community, interested restaurant and bowling alley owners, city commissioners and health department enforcement staff.<sup>349</sup> It was furthermore reported by the *Great Falls Tribune* that professional facilitator had been working with the consensus committee.<sup>350, 351</sup> On November 2, 1999, the City Commission approved delaying the ordinance to January 31, 2000.<sup>344</sup>

The consensus committee was responsible for the last of the amendments made to the smoking ordinance, which weakened it considerably (Table 31). According to Assistant City Manager Cheryl Patton, the amendments were developed partly to deal with complaints with earlier versions of the ordinance, and partly to make non-smoking establishment the “community norm,” but in a slow manner. Patton stated “[t]he idea is to phase in, somewhat, the change to nonsmoking public places.”<sup>351</sup> The amendments would next be subject to a public hearing on December 15, 1999, where the ordinance would be approved by the City Commission.<sup>351</sup>

<b>Table 31: Final Version of Great Falls Local Smoke-free Ordinance.</b> <sup>351, 352</sup>
<ul style="list-style-type: none"> <li>• Existing restaurants to make a one-time declaration on their intent to be non-smoking or smoking establishments. Smoking-establishments could later change to non-smoking, but non-smoking establishments could not later change their designation.</li> <li>• Restaurants with two separate areas that allowed smoking in one area still had to be designated as smoking restaurants unless they had fully enclosed, separate spaces and separate ventilation systems.</li> <li>• Newly constructed restaurants would be non-smoking, unless it had a liquor license (then it would be allowed to make a one time declaration of its smoking status).</li> <li>• An existing smoking-designated restaurant that is sold can remain a smoking establishment. However, an existing non-smoking restaurant that is sold cannot be changed to a smoking restaurant.</li> <li>• Bowling centers are exempt from the smoking ban except during times of children's activities, such as fund-raising events or youth tournaments.</li> </ul>

Comments from health advocates who were on the consensus committee showed a belief that compromise was necessary in order to get the ordinance passed. Committee member Alex Philips of the ALA, said, “We really didn't get much out of these amendments,” but added, “As part of the consensus group, I officially have to support what we came up with, but I felt that's what we had to do to get any ordinance at all.” Philips further stated, “[t]his ordinance had been delayed, and we just wanted to get something in place.”<sup>351</sup> Philips did indicate, however, that she and other health advocates viewed the ordinance as a stepping stone for a stronger ordinance in the future.<sup>351</sup> Despite the exemptions, city officials also expressed their approval of the ordinance. Great Falls City Clerk Peggy Bourne called the ordinance a “great first step” for public health, and said “[i]t really went a long way.”<sup>353</sup>

Some tobacco control advocates, however, felt that the ordinance had compromised too much. In fact, at the December 15, 1999 hearing before the city commission, Wendy McCamey, representing the American Cancer Association, was among the 13 individuals opposing the



ordinance.<sup>344</sup> Some state-wide tobacco control advocates were critical as well. C.B Pearson, in a 2005 interview, observed that

...a process of mediation was initiated by the city to try to come to some sort of agreement. And the health groups all wanted to make sure that there was no compromise, no weakening compromise, and in the end, in my view, the mediator screwed up. Basically, the person was hired by the city to mediate... you have to honor all parties. She came to help advocates who were in the mediation... and said, basically, "if you don't know how [to make a] deal, they're going to ignore you and do what they want to do."

And a mediator should never do that. A mediator should step out and say, "There isn't consensus. This process isn't going to work." This person should not be striking a deal, [she should] not be going back and forth from one side to the other.

...So that was a real intriguing process in which negotiations and mediation actually resulted in a weaker policy...<sup>95</sup>

Dr. Robert Shepard was also critical of the ordinance. Shepard stated in a 2005 interview that "Great Falls put in an ordinance that was hardly worth having... they were all proud of it because they didn't have any controversy. The reason they didn't have any controversy was because they weren't even doing anything... And so it's kind of like, 'Okay, you just immortalized the status quo, thank you very much.'"<sup>53</sup> The tobacco industry, once again using public controversy through the mobilization of the hospitality industry, had successfully weakened the clean indoor air ordinance, just as they done against the 1979 Clean Indoor Air Act and the 1990 Cigarette Tax Initiative.

City Officials continued to defend the compromised ordinance after its implementation on January 31, 2000. In a March 1, 2000 article in the *Great Falls Tribune*, Kristy Evans, health educator for the City-County Health Department, explained, "The idea is to gradually phase out the amount of smoking," and noted that of about 160 restaurants required to specify a smoking designation, 86 had declared themselves smoke-free. However, that same article noted that many Great Falls residents had noticed little change after the ordinance was enacted, since restaurants simply kept the same policies they had before the smoke-free ordinance went into effect.<sup>354</sup> Indeed, in the years between 2000 and 2005, the Great Falls ordinance had not been amended to further strengthen clean indoor air protections.

### ***Helena***

After the weak local ordinance was passed in Great Falls, tobacco control advocates looked to Helena, the capitol city of Montana, as an important place to pass a smoke-free ordinance. As explained by C.B Pearson in a 2005 interview, health groups saw Helena as crucial in advancing tobacco control policies throughout the state:

There was kind of a strategic decision made by the health groups - Heart, Lung, Cancer, primarily Lung at the time - along with the local Health Department and encouragement by others to look at Helena as a critical avenue for change in Montana.

... Primarily because we felt that to beat the industry, we need to win in their home turf. And that's where they all operate, out of Helena. We also knew the politics of the strength of the health community was good here. We had certain assets that we didn't have in other communities and it's also a media market. And actually the third reason was that we began to realize that we needed a political base in the capitol to have influence on the session.<sup>95</sup>

The Lewis and Clark County Tobacco Use Prevention Program, run by the County Health Department conducted an opinion survey of 425 voters from November 16 to 19, 1999. According to the survey, 94% supported smoke-free workplaces, and 84% agreed that the city of Helena (which was in Lewis and Clark County) should adopt a policy prohibiting smoking in the workplace. In addition, 76% of those surveyed agreed with prohibiting smoking in restaurants, and 75% agreed with prohibiting smoking in bowling alleys. The results were reported in a February 2000 article in the Helena Independent Record.<sup>355</sup>

As Dr. Shepard explains, the county health board began looking into a smoking ordinance in the following months:

[I]n March or April of 2000, ... I made a presentation to the board of health... And it was basically just, this is what the science says: It's a dangerous product, it causes cancer, probably causes heart trouble. You know, it causes all kinds of other problems, ear infections and pneumonia. I went through a whole laundry list of things... And so they agreed to look into an ordinance... so work started to be done on it.<sup>53</sup>

In August 2000, the County Health Department announced that “conceptual ideas that will be developed into a draft ordinance restricting smoking in public places in Helena will be released at a public meeting...” to be held on August 3, 2000.<sup>356</sup> Michael Huntley, a tobacco prevention specialist for the County Health Department, also announced that there would be numerous opportunities for public participation with the subcommittee that was writing the ordinance. The subcommittee would then make recommendations to the Board of Health, which would send the proposed ordinance to the city commission for approval.<sup>356</sup>

The Montana Tavern Association's (MTA) initial reaction to the news of Helena's ordinance was restrained. Mark Staples, spokesman for the Montana Tavern Association, stated that the MTA had no position on the ordinance. However, Staples also said, “There are tavern owners and restaurateurs concerned about this,” and that, “A number of them made it clear they want to be involved in this process.”<sup>356</sup>

When it was released at the August 3, 2000 public meeting, the draft version of the ordinance prohibited smoking in almost all public places, including restaurants. However, the ordinance would exempt existing bars, retail tobacco stores, private functions not accessible to the general public and separately ventilated smoking rooms. In response to several questions regarding the exemptions, County Health Officer Joan Miles described the exemptions as “political realities.”<sup>357</sup> Violations of the ordinance would be punished with a \$100 fine.<sup>358</sup> Miles also explained that the ordinance was modeled on Missoula's, though further work would be done to tailor it to Helena's needs.<sup>357</sup>

In the month following the County Health Department's announcement of the planned smoke-free ordinance, a "Restaurant Employee Petition in Opposition to Helena Smoking Ban," signed by employees of the Montana Nugget Casino, and a petition of Helena citizens, "Attention: Helena City and County Commission," were circulated - both of which were printed and circulated by the National Smokers Alliance (NSA).<sup>359</sup> The NSA was launched by the public relations firm Burson-Marsteller for Philip Morris in 1993, and received an estimated \$4 million in seed money from Philip Morris, along with additional funding from Brown & Williamson and Lorillard.<sup>360</sup>

The connection between the NSA and the tobacco companies was pointed out by C.B Pearson of M&R Strategic Services in the report "Blowing Smoke: The Hidden Truth About How Big Tobacco Seeks to Stop Public Health Measures in Montana."<sup>359</sup> The report was written as part of the Helena ordinance effort, and was funded by grant money from the Robert Wood Johnson Foundation through ACS, AHA, and ALA.<sup>95</sup> In response to the accusation in Pearson's report that the Montana Tavern Association (MTA) was working as a "front group" for the tobacco industry, Mark Staples (lawyer for the MTA) asked the NSA to refrain from getting involved in the debate over the proposed ordinance. Staples stated, in a September 13, 2000 Associated Press article, "The damage they would do would be worse than anything that would result." Furthermore, Staples said,

The Montana Tavern Association is not a front group for anyone, and it does not need to be a front group for anyone," and that "[t]he Montana Tavern Association is not a stooge for some national outfit. These accusations are coming from a group that sees a total ban on smoking as a remedy to disrupt civil proceedings between citizens and elected officials.<sup>361</sup>

It was not publicly known in May 2000, and therefore not discussed during the Helena ordinance debates, that both the Montana Tavern Association and Mark Staples had significant ties to the tobacco industry. As previously discussed in this report, the Montana Tavern Association was facilitating and promoting public speaking engagements by tobacco industry coordinated spokespersons, Mary Ann Latko and Beverly Swanson, to the local hospitality industry without revealing their tobacco industry ties.<sup>329</sup> It was also not publicly known that the tobacco industry had given financial contributions to both the Montana Tavern Association and the Montana Wholesale Distributors Association in the care of Mark Staples.<sup>304</sup>

The County Health Department held one public hearing on the proposed ordinance on May 7, 2001 and, in addition, accepted written public comments for the following two weeks. In reporting on the hearing, the *Helena Independent Record* wrote, "More than 100 people, slightly more opponents than proponents, showed up to the nearly three-hour hearing."<sup>362</sup> The article also summarized the types of arguments that came from both sides:

...proponents hammered home their point that secondhand smoke is a public health threat. A minister said smoking is a sin. A boy said children don't always have a choice to leave a smoking area. And a multitude of doctors said secondhand smoke is a public health hazard... Others presented petitions of signatures from bowlers, elementary school children, teachers, soccer players and members fo the Better Breather's Club. Two bar owners stood in support of the restrictions.<sup>363</sup>

The articles' coverage of the opposition testimony to the ordinance focused on Mark Staples, lawyer for the MTA. Staples told the City Commission that there wasn't any legal reason for the city to adopt an ordinance that bans smoking in restaurants and bars. Staples furthermore argued that any change in smoking policy should be customer driven, rather than imposed by the city. According to the *Helena Independent Record*, "Employees of bars, business owners and regular citizens reiterated the free-market philosophy,"<sup>363</sup> which were standard tobacco industry arguments.

As the ordinance was considered by the City Commission, it became even more comprehensive than some tobacco control advocates initially believed possible. In explaining the ordinance's evolution in a 2005 interview, Dr. Shepard observed:

Now, the director of the board of health [Joan Miles]... has got very pro health values. She believes a lot in public health. She believes in the ordinance... And she sort of kept telling the tavern industry locally to be patient, if they went through the whole process, we'd end up with an ordinance that was a compromise that would allow the bars to remain smoking... And I actually didn't have an opinion on that early on. My idea was to get the ordinance going. If you had asked me in 2000, [whether we would have] an ordinance that was totally smoke-free, I probably would have said, "Nah, it would never fly politically."

So we worked through this whole thing... the representative from the city commission on the board of health was Jim Smith, who is our current mayor [in 2005]... and he was also a lobbyist for the Cancer Society and he let that be known... And he believed in the ordinance. And we were working through this whole thing and the whole issue of do we pass an exemption for bars and casinos or not? That became the issue. So I actually walked in one day to sit down and talk to Jim and he said, "You know, I'm sorry. If it's bad for your health, I just can't support an exemption. If you're going for an exemption, I'm going to have to vote against the ordinance." And I said, "Hi? What the hell? I got one. I only need two more."<sup>363</sup>

At a June 4, 2001 meeting, the City Commission voted to remove all the exemptions from the ordinance, and approved the ordinance in a 4 to 1 vote.<sup>363</sup> In explaining the removal of the exemptions, Commissioner Jim Smith said at the meeting, "If a retail tobacco store is open to the public like all other retail stores, my feeling is it should be bound by the ordinance." Smith further stated that secondhand smoke is a "clear and present danger," and that a smoking ordinance was for the public good.<sup>363</sup>

Public reaction to the City Commission's initial vote from opponents of the ordinance was strong. Commissioners and the city clerk's office told the press that they had "received about 100 post cards, a thick manila envelop full of letters, e-mails, and up to a dozen telephone calls to their homes in opposition to the decision. They also received about eight thank you letters and a few supportive phone calls..."<sup>364</sup> Commissioner Smith stated that he had "gotten lots of feedback both pro and con."<sup>364</sup> But the vocal criticism from the opposition did not change the minds of the commissioners. On June 18, 2001, the city commission voted 4-1 to implement the smoking ordinance on September 1, 2001.<sup>365</sup>

As passed, the Helena Smoking Regulations (Helena City Code Chapter 13) prohibited smoking in "all indoor public places, places of employment, and service lines..." and exempted

private functions, parties, and gatherings not accessible to the public, as well as rooms in hotels and motels.

- *Helena Referendum*

When the tobacco industry fails to weaken or prevent smoke free ordinances on the local level, it often finances an election campaign to repeal the ordinance by popular vote. However, such efforts by the tobacco industry have failed when health professionals and elected officials remained active and committed to protecting smoke-free ordinances. In the case of the Helena ordinance, the health advocates stood firmly against the tobacco industry referendum tactic, and were able to keep their smoke-free ordinance.<sup>68</sup>

A July 11, 2001 *Helena Independent Record* article reported that opponents of the Helena ordinance were gathering signatures to put a referendum on the ballot to overturn the smoking ban. The referendum effort was spearheaded by the Montana Tavern Association, and reportedly consisted of local business owners. Petition organizers had to gather 2,400 signatures (15% of the turnout for the previous city election) from registered Helena voters.<sup>366</sup> Petitioners successfully gathered the required signatures by September 1, 2001, thus putting the smoke-free ordinance on hold until a vote in June 2002.<sup>367</sup>

As the Montana Tavern Association was organizing the referendum effort (and before they gathered the requisite number of signatures), health advocates formed a political action committee (PAC - independent committees that support or oppose candidates and issues, and which are ongoing in elections yearly) in order to better support tobacco control issues. As explained by Dr. Shepard, "So as soon as we realized that [the referendum] was going to happen, while they were working spending all their time and energy on the referendum, we formed a PAC. A legitimate, full-fledged political action committee. Citizens for a Healthy Helena, chairman right here. And I went around and raised money and got people to donate to the PAC..."<sup>53</sup> As a PAC, Citizens for a Healthy Helena was also able to endorse local candidates in 2001, including Commissioner Jim Smith who won the a mayoral election.<sup>367</sup>

As the decisive vote neared, both opponents and supporters of the ordinance knew that the outcome would have an influence on tobacco control policy across the state. "We see this as the bellwether for the state," said Dr. Richard Sargent.<sup>368</sup> The President of the Montana Tavern Association, David Morris, said, "This will probably set a precedent if it passes." In addition, the existing ordinances in Missoula and Great Falls which had exemptions could have been affected, since Morris believed both cities would reconsider their exemptions if the Helena ordinance passes.<sup>368</sup> Ann Tedesco, consultant for the anti-ordinance group "Citizens for Clean Air and Common Sense Laws," said "everything has kind of backed off in these other cities," and, "they're just waiting to see what happens here in Helena."<sup>368</sup>

The amount of money raised by both supporters and opponents of the smoke-free ordinance was high for a local election in Montana. Examination of Committee Finance Reports from October 21, 2001 through June 19, 2002 show that supporters of the ordinance raised about \$83,000 in cash contributions, with most of the money coming from the major health groups

(ACS, AHA, and ALA) and individual contributions. Opponents of the ordinance, “Citizens for Clean Air and Common Sense,” raised about \$90,000 in cash contributions. In addition to the several individual contributions made to the anti-ordinance committee, contributions also came from the several local tavern associations, the Montana Tavern Association (contributing \$3,000), and the Philip Morris owned company, Miller Enterprises (contributing \$1,000).<sup>369, 370</sup>

In promoting the smoke-free ordinance, health advocates made a major effort to reach voters in their communities through public speaking events, which would then gain further coverage through the local press. As explained by Dr. Shepard,

And so she [Elizabeth Andrews, of M&R Strategic Services] started this thing up that she called the worker's forum... we were going to go around and invite all the hospitality workers - the bartenders, the waitresses, other people who had worked in restaurants - to come to this forum and hear about secondhand smoke. So she had eight weeks of sessions line up, one hour a week... I did science findings on secondhand smoke, [Dr. Richard] Sargent did how evil the tobacco industry was... We had an attorney come say, “Here's how you can sue your employer if they make you get sick from secondhand smoke.”

So here's what happened. Once a week for eight weeks, we got free media. We maybe had three workers show up each week and that wasn't the audience. The audience was the media. Local television showed up, the radio stations showed up, the newspapers showed up. We got big splashes every Thursday morning in the paper - “Lawyer says sue your employer for secondhand smoke” - “Doctor explains why secondhand smoke will kill you”...

And what it amounted to was a steady drumbeat during March and April, leading up to a June election... So for two months, it was a steady public drumbeat of how bad secondhand smoke was. By the time they got their ballot committee off the ground and started doing anything, they lost the election.<sup>53</sup>

Helena voters approved the smoking ban on the June 4, 2002 election, giving the city the toughest anti-smoking ordinance in the state.<sup>371</sup> The ordinance passed with 61.1% of the vote, 5,352 to 3,406. The 8,758 citizens who voted on the smoking issue represented 55% of all registered voters in the city.<sup>372, 373</sup> When the ordinance went into effect on June 6, 2002, compliance was strong. As described by Dr. Sargent, “Compliance [to the ordinance] was remarkably good. Most places complied voluntarily,” and that by August, “Helena had a retired [police] officer who did the enforcement.”<sup>374</sup> Dr. Sargent added, “Most of the complaints stemming from the ordinance were “in response to bar owners complaints about non-compliance by the competition.”<sup>374</sup> Kristin Page Nei of the American Cancer Society also explained that the ACS, AHS, and ALA “paid for signs that were posted in smoke-free establishments,” which “were posted everywhere in Helena,” and that compliance to the ordinance was very good.<sup>375</sup>

- *Helena Lawsuits*

Another common tobacco industry strategy after failing to weaken or prevent a local smoke-free ordinance is the use of lawsuits, claiming either that the local law is preempted by state law (meaning that the local law conflicts with the state law, and is therefore invalid) or that the local law is unconstitutional on some other grounds (though the tobacco industries attempts

to invalidate smoke-free laws as unconstitutional have usually been unsuccessful).<sup>376</sup> In Helena, two separate lawsuits were brought against the local ordinance: one used a preemption argument and the other used a claim of unconstitutionality. Although both lawsuits would ultimately fail, Helena's smoke-free ordinance would cease to be enforced after it's first six months, as the suit claiming unconstitutionality for lack of a jury trial awaited a final judgement from an appeals court.

Even before the vote was held, ordinance opponents were already promising they'd move the battle to the courts and to the 2003 Legislature if the smoking ordinance passed.<sup>368</sup> Two lawsuits would challenge the Helena ordinance. The first was brought by owners of local hospitality businesses claiming that the ordinance was invalid under state law. The second lawsuit resulted from citations issued to owners of a casino in violation of the ordinance, who then challenged the law as unconstitutional because it lacked a provision for a jury trial.

In July of 2002, several businesses filed a lawsuit against the City of Helena, the Lewis and Clark County Board of Health, and the City-County Health Department, challenging the anti-smoking ordinance as invalid under state law.<sup>377</sup> Plaintiffs in the lawsuit were proprietors of, or corporations that owned local casinos, bars, and restaurants in Helena. Jerry Driscoll, a smoker and former state legislator, was also a plaintiff.<sup>373, 378</sup>

The lawsuit claimed that the city did not have the legal authority to enact and enforce the law, since that authority was superseded by the Montana Clean Indoor Air Act of 1979. According to plaintiffs, since the state Legislature did not authorize local authorities to enact smoking restrictions, state law implicitly preempted any local smoke-free ordinances. Under the 1979 Clean Indoor Air Act, hospitality providers were allowed to designate smoking or non-smoking areas in establishments. Furthermore, taverns and bars where meals are not served were exempt from the Act.<sup>373, 378</sup>

The lawsuit also claimed that the ordinance amounted to a “taking” without just compensation (government entities can take property under the law, but must provide adequate compensation for the taking). Plaintiffs reasoned that hospitality providers acquired protected property rights through their investments in their businesses, relying on the rules and regulations in place at the time. Plaintiffs thus alleged that the smoking ordinance had prohibited them from continued profits, and denied them the economic and productive use of their property. Furthermore, plaintiff's claimed in the lawsuit that the ordinance did not serve any legitimate governmental interest (a law must, at a minimum, be rationally related to a legitimate governmental interest to be valid).<sup>379</sup>

At a hearing on September 23, 2002, plaintiff's attorney Art Wittich asked District Judge Jeffrey Sherlock to issue an injunction that would bar the city from enforcing the ordinance until the lawsuit adjudicated. Wittich presented oral testimony from two business owners claiming that business declined as a result of the law. City Attorney David Nielson opposed the request, and asked Judge Sherlock to deny the motion. Judge Sherlock denied the request for an injunction in October 2002, and would go on to hear arguments on November 26, 2002 in support of a motion to dismiss, filed by City Attorney David Nielson.<sup>380-382</sup>

On January 7, 2003, Judge Sherlock dismissed all but one of the counts in the lawsuit. In discussing the counts that were dismissed, the court wrote in its opinion "that the Ordinance was properly authorized, is a valid exercise of the powers of the city of Helena and does not impermissibly conflict with state law."<sup>383</sup> Judge Sherlock further noted that "cities with self-governing powers.... can impose stricter regulations than those imposed by the state," and that the standards imposed by Helena's ordinance are more stringent than those imposed by state law.<sup>383</sup> The only claim in the lawsuit that was not dismissed was the allegation that the ordinance constitutes a taking of plaintiff's property without compensation. Judge Sherlock believed that plaintiffs had made a proper claim, and were entitled to a trial where they would have the chance to prove the economic losses they claimed resulted from the ordinance.<sup>383</sup>

As late as December 2004, the *Helena Independent Record* reported that there was no movement in the case.<sup>384</sup> The case had ceased to make any further progress because Judge Sherlock wanted to wait until several other lawsuits involving Helena's ordinance had been decided. As a result, the lawsuit stood still and was then ultimately abandoned by plaintiffs as other challenges were ruled upon (one lawsuit involved the lack of a jury trial provision in the Helena ordinance, and another involved House Bill 758, a bill passed by the 2003 Legislature which exempted any business with a gambling license from local smoking ordinances).<sup>384</sup> Finally, the state Legislature passed the Clean Indoor Air Act of 2005, which would preempt local smoke free ordinances.

The second lawsuit against the Helena ordinance resulted when violators claimed it was unconstitutional for not providing a provision for a jury trial.<sup>385</sup> The smoke-free ordinance was a municipal infraction (similar to a traffic violation), not a criminal violation, and therefore there was no right for a jury trial under state law. An August 4, 2002 article by the Associated Press reported that "the city issued its first civil citations for violations of the recently adopted clean indoor air ordinance."<sup>386</sup> The owner and general manager of Montana Nugget Casino had a total of 16 infractions of the ordinance: eight were issued against G.N.C. Inc., and eight against manager Greg Straw (each was cited for the same eight violations). The cited violation were for failing to post required "No Smoking" signs and for failing to prohibit smoking by patrons.<sup>386</sup>

On August 15, 2002, attorney Thomas Budewitz, representing the Montana Nugget Casino, and general manager Greg Straw, denied each of the 16 charges filed by the city for violations before Acting City Court Judge Karen Bryson.<sup>387</sup> Budewitz then filed a motion to dismiss the city's citations on two ground: 1) that the ordinance was invalid because it was preempted by state law, and 2) that the law was invalid because it lacked a provision for a jury trial.<sup>388</sup> On Dec. 3, 2002, City Judge Myron Pitch (where the case was moved as a matter of administrative procedure) granted the defendant's motion to dismiss all 16 citations because, according to his opinion, the ordinance was unconstitutional since the municipal infractions lacked any provision for a jury trial.<sup>388, 389</sup>

The Helena City Commission decided, on the recommendation of city attorney Nielson, to appeal the city court decision. Nielson was confident that the appeal would overrule Judge Pitch's decision. Commissioner Tom Pouliot agreed with Nielsen that the Pitch decision would



be overturned, and believed the appeal was necessary because other ordinances (like speeding tickets) were defined as municipal infractions as well. Even Commissioner Steve Netshcert, who had voted against the smoke-free ordinance in both City Commission meetings, felt that appealing the case was “the lesser of two evils,” because of the effect it had on other municipal infractions.<sup>390</sup> Health advocates were also very confident that the ruling would be overturned. As explained by Dr. Shepard, “There wasn't an attorney in the city that thought that was a rational decision.”<sup>53</sup>

The appeal was argued before District Court Judge Thomas Honzel in early 2003, but a ruling in the case was put on hold until the State Supreme Court ruled on a constitutional challenge regarding House Bill 758, a bill passed during the 2003 Legislature which exempted any business with a gambling license from local smoking ordinances. The Supreme Court ruled on December 28, 2004 that HB 758 did not bar local smoke-free ordinances, thus upholding all of the local smoking ordinances in the state. On March 9, 2005, attorneys for the City of Helena and the Montana Nugget Casino returned to district court to again argue the appeal before Judge Honzel. In April 2005, Judge Honzel upheld the Helena smoking ordinance, ruling that the right to a jury trial is not absolute, and agreeing with the rationale that many other regulations, such as traffic regulations, provide for a hearing in court without a jury.<sup>391, 392</sup>

Even though both cases involving Helena's ordinance ruled in favor of the city's right to restrict smoking, a state law passed in April 2005 would preempt local smoke-free ordinances, and provide exemption for bars and casinos for four years. So, even though Helena won the right to enforce local smoke-free ordinances, the City Commission decided to forego enforcement, since smoking in bars and taverns would be allowed (for at least four years) when the Montana Clean Indoor Air Act of 2005 took effect on October 1, 2005.

- *Helena Heart Study*

Although the City Commission decided to appeal Judge Pitch's ruling, and ultimately won the appeal, the city ceased enforcement of the smoking ordinance until the appeal of the case was decided. During that time, Helena Doctors Richard Sargent and Robert Shepard contacted Professor Stanton Glantz of the University of California, San Francisco, to conduct a study which compared the number of heart attacks during the time the ordinance was in effect versus the time when it was not in effect. The study was based on heart attacks reported at St. Peter's, the only hospital in the Helena region serving a population of 68,140.

Initial results of the study were reported by Dr. Sargent at the American College of Cardiology's 2003 annual scientific meeting in Chicago and by Dr. Shepard at St. Peter's in Helena on April 1, 2003. The final study was published in the British Medical Journal on April 24, 2004. The study found that “[d]uring the six months the law was enforced the number of admissions [for acute myocardial infarction] fell significantly, from an average of 40 admissions during the same six months in the years before and after the law to a total of 24 admissions during the six months the ordinance was in effect.”<sup>393</sup>

The study gained worldwide attention. Reports about the heart study appeared on the CNN and MSNBC websites, and in national and local newspapers (such as the Chicago Sun Times, the New York Times, the Washington Times, the Wall Street Journal, Biloxi Sun Herald (Mississippi), the Macon Telegraph (Georgia), and the Roanoke Times (Virginia)). The heart study story was also reported by news outlets in other countries (the CBC and Globe & Mail in Canada, the British Broadcasting Corp., and India's Hindustan Times).<sup>394</sup>

Despite worldwide attention and the positive effects shown from the Helena smoke-free ordinance, the heart study had little effect on state legislators or Gov. Martz. Only 9 days after the study was first announced, the Senate approved House Bill 758, thus exempting any establishment with a gaming license from local smoke-free laws. On April 23, 2003, Gov. Martz signed HB 756 into law. When questioned by reporters about the public health implications of the law, Martz stated that she supported the bill based on property protection rights and the support for it shown by legislators.<sup>395</sup>

### ***Bozeman***

In May 2001, a group of community volunteers in Bozeman organized as Tobacco Free Gallatin began to support a proposal for a local smoke-free ordinance that had been brought to the City-County Board of Health by the Chief Joseph Middle School Breakfast Club, a group of middle school students. Local tobacco control advocates spoke to the City Commission at a May 24, 2001 public meeting, bringing to attention the danger of secondhand smoke. Opponents of the smoke-free ordinance also spoke at the meeting, including a representative of the Bozeman Chamber of Commerce, who argued that an ordinance was not necessary because many restaurants and bars were going smoke-free on their own. At a May 24, 2001 meeting, the Board of Health unanimously approved a resolution to support a smoke-free ordinance, meaning the proposal would next be presented to the Bozeman City Commission (the equivalent of a City Council).<sup>396</sup>

The proposal for a smoke-free ordinance in Bozeman gained a good deal of public attention, just as it had in Missoula, Great Falls, and Helena. Even before a draft had been written, Bozeman Mayor Marcia Youngman received “scores of letters, phone calls and e-mail messages,” according to the *Bozeman Daily Chronicle* in a July 2001 article.<sup>397</sup> Mayor Youngman said, “It’s a hot issue,” and commented that “[t]here is a huge amount of public support.”<sup>397</sup> Youngman furthermore discussed a poll of 542 residents surveyed at grocery stores and post offices conducted by Tobacco Free Gallatin, a local Gallatin County tobacco control advocacy group, in 2000. The survey showed that 98% supported smoke-free workplaces. Although Mayor Youngman seemed generally supportive of the ordinance, saying she had “strong convictions” on the issue, she also showed a desire to compromise and wanted to bring in mediators to find a common ground between the opposing side.<sup>397</sup>

In August 2001, both opponents and proponents of the smoke-free ordinance submitted draft ordinances for the City Commission to consider in its decision to regulate indoor smoking. The Gallatin County Licensed Beverage Association submitted a version that would allow bars and restaurants to decide whether to allow smoking in their businesses (a policy that would

“accommodate” smokers and non-smokers to provide for the creation of smoking and nonsmoking sections to avoid creating 100% smoke-free areas, commonly promoted by the tobacco industry<sup>69</sup>), and exempt other some businesses, such as retail tobacco shops and hotel rooms. Alex Phillips, a volunteer for Tobacco Free Gallatin, criticized the hospitality industry proposal, saying “...it seems to forget the fact that restaurants and bars are workplaces.”<sup>398</sup>

Alex Phillips and 11 other Bozeman residents, including Dr. Collette Kirchhoff, wife of Bozeman City Commissioner Steve Kirchhoff, submitted another proposal. Their submitted proposal was not sponsored by Gallatin Free Tobacco, but Phillips explained that when she heard that the beverage association was submitting an ordinance, they rushed to write an alternative version for commissioners. The version written by health advocates banned smoking in all workplaces and public places in Bozeman. This health advocate version exempted private residences not used for child care or adult health care facilities, as well as restaurants and conference rooms when they were used for private functions.<sup>398</sup>

Beginning in July 2001 and continuing into April 2005, much attention had been given to the Helena smoke-free ordinance and the challenges to it in both the public and legal arenas. As such, the fights surrounding the Helena ordinance likely had an effect on Bozeman City Commissioners who were still trying to decide how to proceed with the smoke-free ordinance they were considering. On July 29, 2002, the Bozeman City Commission asked the city legal staff to write a comprehensive ordinance which would include bars and restaurants, and exempt only outdoor seating areas and tobacco sales businesses. Steve Kirchhoff, now Mayor of Bozeman as of 2002, showed a reluctance to pass a contentious ordinance, preferring instead to pass that responsibility on to voters. Kirchhoff said at the Commission meeting, “Some of those provisions are quite contentious and I think it’s a fair thing to do to ask the people if they want a clean air ordinance.”<sup>399</sup> The Commission would decide whether to send the proposal to voters at an August 21, 2002 meeting.

Just as had been done against the Helena ordinance, the Gallatin Licensed Beverage Association in August 2002 was threatening to sue the city of Bozeman if voters approved the ordinance that the Commission was now thinking of putting on the November 2002 ballot. Art Wittich, attorney for the Bozeman association (who also represented tavern and casino owners in a lawsuit against the Helena ordinance) wrote a letter to City Attorney Paul Luwe in August 2002, making arguments that the proposed ordinance was unconstitutional. Wittich’s letter furthermore stated, “The Bozeman proposal restricts the business owner’s rights as guaranteed by the [Montana Clean Indoor Air] Act to designate their establishment smoking, non-smoking or both,” and, The Montana legislature explicitly exempts taverns or bars where no meals are served from regulation under the Act.”<sup>400</sup> These arguments were also used unsuccessfully by Wittich in the lawsuit against the Helena ordinance.

According to an August 18, 2002 article in the *Bozeman Daily Chronicle*, a group of local business owners paid for a poll conducted by A & A Research of Kalispell, Montana. The poll was conducted in anticipation of the City Commission meeting on August 19, 2002. The article reported that the survey “...polled 400 Bozeman residents. The results did not report the

margin of error.”<sup>401</sup> The poll found that 40% favored a complete ban, 41% favored exemptions for bars and taverns, and 70% said the public should have more input into the ordinance.<sup>401</sup>

At the August 19, 2002 City Commission meeting, city hall was packed by both supporters and opponents of the local ordinance. The Gallatin Licensed Beverage Association asked the commission to put an ordinance on the ballot that exempted bars and casinos. Opponents of the ordinance were successful in the arguments to the Commission. After the three-hour meeting, the Commission directed city legal staff to draft a smoke-free ordinance that would exempt bars and casinos. The Commission would next decide at an August 21, 2002 meeting whether to send a comprehensive smoking ordinance to voters, or pass an ordinance themselves.<sup>402</sup>

At an August 21, 2002 meeting, the City Commission decided to enact an ordinance themselves, rather than put the decision on the ballot. The Commission voted 5-0 to pass a smoking ordinance that prohibits smoke in public places including restaurants, but exempted bars and casinos. In explaining the compromised version of the ordinance, Mayor Steve Kirchoff said, “With this ordinance we ensure even more protections for the public, while still allowing some smoking bars to occur in our city.” Kirchoff also indicated a desire by city commissioners to pass an ordinance that satisfied both sides, saying “[t]his ordinance protects public health and provides the choice we’ve heard so many folks clamoring for.”<sup>403</sup> A *Bozeman Daily Chronicle* editorial discussing the ordinance also observed the likely desire to avoid future conflicts as significant factor in the City Commission’s decision, saying, “...the compromise may also have the added benefit of helping the city elude the lawsuit threatened by the local tavern association if a comprehensive smoking ban were put in place.”<sup>404</sup>

## STATE PREEMPTION

In the general history of tobacco regulation, local policy makers have been more sensitive to the will of the people and less sensitive to lobbyists and campaign contributions from tobacco allies in comparison to state and federal policy makers. As a result, local government has often been more willing to enact strong tobacco control measure than state or federal governments. The tobacco industry's strategy in dealing with such circumstances has been to seek state preemption of tobacco control, in which the state legislature removes the authority of local governments to enact ordinances.<sup>308</sup> The industry's standard strategy is to support weak and ineffectual state laws while eliminating local government power to regulate tobacco.

To promote statewide preemption, the tobacco industry and its allies have typically called for “statewide uniformity” and the desire to avoid “a patchwork quilt of local laws.”<sup>405</sup> This strategy allows the tobacco industry to fight a single battle in the state legislature, as opposed to fighting numerous campaigns within the state.<sup>405</sup> As revealed in the June 30, 1994 Philip Morris internal presentation, “Preemption/Accommodation Presentation,” preemption and accommodation (which provides for the creation of smoking and nonsmoking sections to avoid creating 100% smokefree areas<sup>69</sup>) has been one of the major strategies of the tobacco industry since the mid-1990s:

Our goal is to see some form of preemptive/accommodation legislation passed in all 50 states by the end of next year. The achievement of universal preemption/accommodation is imperative... The immediate implications for our business are clear: if our consumer have fewer opportunities to enjoy our product, they will use them less frequently and the result will be an adverse impact on our bottom line.<sup>406</sup>

In Montana, state legislators attempted to preempt local ordinances in two instances. The first attempt in 2003, which was defeated in the legislature, was through House Bill 258, which would have prohibited any local ordinance that was stricter than the Montana Clean Indoor Air Act of 1979. The second attempt at preemption was made through House Bill 758 in 2003, exempting establishments with gambling licenses from local smoke-free ordinances. Though HB 758 was approved by the legislature, it would ultimately be defeated in a lawsuit brought by state tobacco control advocates.

### ***House Bill 258 : A Failed Attempt to Pass State Preemption***

Freshman Representative Rick Maedje (R-Fortine) introduced House Bill 258 on January 8, 2003, the same week that District Judge Jeffrey Sherlock had dismissed several claims against the Helena ordinance. HB 258 would prohibit a local government from adopting requirements more restrictive than state law on smoking in enclosed public places, and would also provide funding for the reimbursement of costs to adults who successfully completed a tobacco cessation program.<sup>407</sup> It is likely that the tobacco cessation reimbursement was included in HB 258 to deflect expected criticism that the bill was anti-health. Maedje pointed to the Helena ordinance when explaining the purpose of HB 258, calling it “an absolute nightmare” for everyone involved, that he wanted to prevent future lawsuits.<sup>408</sup> In reaction to proposed HB 258, Ellen Leahy, director of the Missoula City-County Health Department stated to the *Helena Independent Record*, “This action really robs communities of their ability to have local control over the public health issue.”<sup>408</sup>

At the January 28, 2003 hearing before the House Committee on Local Government, Rep. Maedje explained that HB 258, by prohibiting all local laws to be no more restrictive than the 1979 Clean Indoor Air Act, was intended to deal with the smoke-free ordinance issue by creating a uniform framework upon which local government, private property owners, and the public can rely on, while serving the interest of public health. Maedje then noted that HB 258 gave attention to smoking cessation, and created a uniform guideline to regulate smoking. Maedje also said that the bill would keep local governments from getting carried away with ordinance that results in unnecessary litigation.<sup>409</sup>

At the January 28, 2003 House Committee hearing, supporters of the bill had a minimal presence, and argued economic damage and business rights. Seven individuals testified in favor of HB 258, including Jerry Driscoll (former House member who received \$250 in tobacco industry contributions between 1990 and 1994 and who was a plaintiff in one of the lawsuits against the Helena ordinance) representing employees in the hospitality industry. Driscoll claimed that many employees were laid off and others had their hours reduced as a result of the Helena ordinance. Other supportive testimony focused on the rights of business owners to run their establishments as they see fit.

In opposition to HB 258, public testimony was given by 37 individuals at the House Committee hearing, and comments focused on public health and the rights of individual communities to pass ordinances. Among the testifying opponents were representatives of the American Cancer Society, the American Lung Association, and the American Heart Association, as well as the mayors of Bozeman and Missoula. Dr. Richard Sargent also pointed out the economic impact of smokefree ordinances, submitting a chart that showed medical claims for state employees, dependents and retirees in the Helena area dropped by about \$478,000 during the six months the Helena ordinance was in effect.<sup>409, 410</sup> House Committee member Hal Jacobson (D - Helena) focused on the effect HB 258 would have on local government:

There are a couple of points to this... Whether you are for or against smoking, this bill has much broader effects on local control. People talk about the need to maintain as much local control as we can, and this bill sets the stage to not only pre-empt smoking ordinances, but other local control issues the public has the right to enact. It goes beyond what state laws should address.<sup>409, 410</sup>

At the February 11, 2003 meeting of the House Committee, it became more evident that HB 258 was intended as a preemption of the Helena smoke-free ordinance. Rep. Jesse Laslovich (D-Anaconda) questioned whether the four Montana cities that already approved smoking ordinances would be able to grandfather in their laws so that they would not be affected by HB 258. In answering the question, legislative staffer Connie Erickson, who drafted the bill at Maedje's request, told the committee that local ordinances would have to be grandfathered in by date, and that there was no way to grandfather in the Bozeman ordinance without including Helena. Erickson told the committee, "Rep. Maejde did not want to grandfather in [the] Helena [ordinance]."<sup>411</sup>

The House Local Government Committee rejected HB 258 in a 9 to 7 vote at February 11, 2003. The defeat of the bill was likely motivated more by the committees desire to prevent preemption of a local ordinance than with the health concerns of secondhand smoke. As stated by Helena City Manager Tim Burton (who had testified against HB 258 before the committee), "what those guys said is essentially they're going to support local elections."<sup>411</sup> A desire to protect local ordinances was also shown by Rep. Laslovich, who stated, "I would rather the Legislature be proactive than reactive, rather than pre-empt local government and laws that voters have enacted. I could support this bill if the four that have already passed could stand."<sup>412</sup>

Rep. Maedje would make one last attempt on February 20, 2003 to save HB 258 by proposing an amendment that would let ordinances in Helena, Great Falls, Missoula and Bozeman remain intact. Rep. Maedje had previously rejected the idea of such an amendment, saying that he was "absolutely not going to sponsor that amendment." However, it became clear to that adding such an amendment was the only chance to get the bill through the committee, though the last ditch attempt did not succeed. The House Committee on Local Government again rejected HB 258, tabling the bill in a 12 to 4 vote.<sup>413</sup>

### ***House Bill 758: Achieving State Preemption Through a Gaming Bill***

Just as the tobacco industry uses the hospitality industry to oppose smoke-free policies, the tobacco industry has also mobilized the casino segment of the gambling industry to oppose

smoke-free policies and promote ventilation as an alternative to smoke-free areas.<sup>414</sup> In Montana, the tobacco industry lobbied through the Montana Tavern Association (MTA) and MTA lobbyist Mark Staples (both of which have financial ties to the tobacco industry<sup>304, 305, 329</sup>) to successfully enact House Bill 758, which exempted any establishment with a gaming license from local smoke-free ordinances. Introduced as a bill that generally revised the laws pertaining to video gambling machines, the bill did not have to go through a Health and Human Services Committee, and quickly achieved passage just 33 days after being introduced.<sup>242, 414</sup>

House Bill 758 was introduced on March 21, 2003 by Rep. Ron Devlin (R-Terry) (who received a \$50 contribution from RJR in 2002), arguing that Helena's smoke-free ordinance resulted in economic damage to businesses.<sup>415</sup> HB 758 would retroactively preempt all of the local smoke-free ordinances in the state by exempting any establishment that had permits for video gambling machines from local ordinances that were more restrictive than the Montana Clean Indoor Air Act of 1979. Since gambling licenses were easily issued at a cost of \$200 in 2003, the bill would amount to preemption by allowing businesses to opt out of local ordinances through the purchase of a license. Businesses did not need to actually provide gambling, but were exempted by just having a license.<sup>414</sup> This proposal especially effected Helena's local ordinance which, unlike the ordinances in Missoula, Great Falls, and Bozeman, did not contain exemptions for bars and taverns.

In explaining the smoke-free ordinance exemptions, Rep. Devlin argued that such exemptions were necessary to protect tax revenue, claiming that the ordinances reduced business in taverns and gambling establishments. Devlin argued that since all local communities send their gambling tax collections to the state for redistribution, allowing smoking in casinos was a way to shield tax revenue, making sure that businesses would not lose money as a result of smoke-free policies. Devlin also claimed that this law would prevent the state from having to replace lost tax revenue with money from the general fund.

Giving support to Devlin's argument were statistics from the Montana Department of Justice, reported in the *Helena Independent Record*, which showed casino tax revenue in Helena for the last 3-months of 2002 was down 12% compared to the previous year, while casino tax receipts in other parts of the state had seen little change. However, the meaning of this statistic was contended by health advocates, who noted that the enforcement of the ordinance was stopped on December 3, 2002, while statistics continued to show a drop in revenue for the rest of that month. Furthermore Dr. Richard Sargent pointed in out in the article that gambling revenue for the 3-month period was still higher than it was for that same period in 2001, before the smoke-free ordinance took effect.<sup>416</sup> Helena City Manager Tim Burton also explained that there was no clear connection between the smoke-free ordinance and reduced revenue, explaining, "other economic factors, like the stock market collapse and Montana's budget crisis, which hits home particularly in Helena where the state employs thousands, may also contribute to the casino's woes."<sup>417</sup>

Although HB 758 would also raise an estimated \$250,000 per year in revenue for the state general fund from fee increases on video gambling machines, there was a notable lack of discussion about HB 758's tax implications, especially since it was being heard before the House

Tax committee. Under the bill, establishments would have to pay a new annual surcharge of \$10-\$20 per machine, depending on the size the business. However, none of the debate or testimony regarding HB 758 dealt with the tax increase. Instead, the argument focused on public health versus business rights. It is likely that the surcharge was added to the bill in order to procedurally place it the House Taxation Committee, rather than a Health or Human Services Committee where the argument for public health concerns would have been better received.<sup>242</sup> The House Taxation Committee was also the committee on which HB 758 sponsor, Rep. Devlin, served as vice-chair.<sup>415</sup>

At the March 26, 2003 hearing before the House Taxation Committee, HB 758 was supported by the gambling and tavern industries, though almost none of the testimony dealt with the tax increases. Among the nine people testifying in favor of the bill were representatives of the Gaming Industry Association, the Butte-Silver Bow Tavern Association, the Missoula County Tavern Association, and the Montana Tavern Association. Among the 13 people arguing against HB 758 were representatives from ProtectMontanaKids.org, the American Cancer Society, American Heart Association, American Lung Association, the Montana Medical Association, the League of Cities and Towns, as well as Dr. Robert Shepard and Dr. Richard Sargent. In commenting about the lack of discussion of gaming machine fee increases, Ward Shannon, lobbyist for ProtectMontanaKids.org noted, “At least we know what this bill is really about,” adding, “It's not about taxes, and that's what this committee is [supposed] to be about.”

Shannon also noted some of the violations of legislative procedure and legal deficiencies of HB 758 at the March 26, 2003 hearing. Shannon stated that the bill was incorrectly labeled as “general revision” in order to allow for the preemption provision, though the bill only revises one section of the code, thus making it misleading as to the effect it had on local smoke-free ordinances. Shannon also argued that the House Local Government Committee had already tabled an identical attempt to preempt local smoke-free ordinances (HB 258), and that it was against the state legislature's procedural rules for the House to reconsider an essentially identical bill that had already been defeated in the same session.<sup>417, 418</sup> Though these complaints were ignored by legislators in the 2003 session, these deficiencies would become some of the main issues in the lawsuit brought by health advocates after HB 758 was passed.

On March 31, 2003 the House Taxation Committee voted to table HB 758 by a 12-6 vote, but the next day, on April 1, 2002, the House Committee reversed itself and voted in favor of the bill by a 12-6 vote. The change of votes was seen by some observers as a result of shared interest among legislators in Destination Montana, a bill that would allow gambling in Butte and which was highly desired by government officials and businesses in the Butte area.<sup>419</sup> Dr. Richard Sargent, in a 2005 interview, gave his account of how the change of votes on HB 758 occurred:

They [members of the House Taxation Committee] met Jerome Anderson, the RJ Reynolds lobbyist, [he] came in and had struck a deal with Butte and Anaconda legislators to help them with an economic development thing [Destination Montana] that was going to revive those two communities. And in trade for that, they had to vote for his bill. And it passed out of the House. It passed out of that committee that night. It got to the House the next morning... passed there. It was just a raucous slide on rails at that point or what we call a greased pig. There's no way you're going to stop it.<sup>125</sup>



In the April 2, 2003 *Helena Independent Record*, Rep. Jesse Lasolovich, (D-Anaconda) admitted that he was lobbied by Butte and Anaconda executives on March 31, 2003, though he denied any vote trading. Rep. Laslovich was one of the the committee members who changed his vote on HB 758, as did Rep. Larry Cyr, (D-Butte).<sup>419</sup>

HB 758 was approved on April 3, 2003 by a final House vote, 58 to 42, and sent to the Senate, where it was referred to the Senate Committee on Business and Labor. At the April 7, 2003 Senate Committee hearing, members of the tavern and gaming industry again supported HB 758, including the long time tobacco industry front group the Montana Tavern Association, MTA lobbyist Mark Staples and representatives from the Montana Restaurant Association (which, according to a Philip Morris 2001 State Coalition Status Report, was part of the PM Montana State Coalition along with the MTA<sup>80</sup>) and the Montana Gaming Industry Association. Arguments from supporters of the bill focused on private property rights and gambling revenue. Opposition testimony came from several health groups, as well as representatives from local governments and health departments. Opposition arguments focused on public health and local government control. The Senate Committee approved HB 758 by a 10 to 1 vote, sending the bill to a vote by the full Senate.<sup>420, 421</sup>

On April 9, 2003, the full Senate voted 31 to 18 in support of HB 758. Arguments before the vote lasted for more than two hours, with proponents emphasizing private property rights and opponents emphasizing local control. Opponents attempted to send the bill back to the House by adding amendments to the bill (the amendments would have to be approved by the House before the bill was signed by the governor), where HB 758 had only barely been approved. HB 758 Sponsor, Rep. Devlin, argued against any such amendments, and none of them were approved. Thus, just 33 days after being introduced, HB 758 had been approved by two committees and both chambers of the legislature, and would next go to Gov. Judy Martz for approval.<sup>414, 422</sup>

Gov. Judy Martz, who had consistently adopted pro-tobacco positions during her administration, announced on April 11, 2003 that she would sign HB 758 “because it protected property rights.”<sup>423</sup> On April 23, 2003, Gov. Martz signed HB 758 into law. In a statement released by her office, the Governor blamed health advocates failing to compromise:

There was an effort to find a way to amend the bill to give bars and casinos what they wanted from the bill - the right to have smoking in their establishments - and still recognize local anti-smoking ordinances... What we learned, however, is that opponents to HB758 wanted the bill vetoed with no exemptions, which was unacceptable and therefore the bill was signed in law as written.<sup>424</sup>

With the passage of House Bill 758, establishments with video gambling machine licenses were exempt from local government smoking ordinances that were more restrictive than the state's clean indoor air act. This meant that in addition to casinos, businesses such as bowling alleys, convenience stores, laundromats, bars and restaurants could not be regulated by local smoke-free air ordinances if they had a video gaming license.<sup>242</sup>

## *Lawsuit Against House Bill 758*

At a May 15, 2003 press conference held on the Capitol lawn in Helena, several health groups announced their intent to sue the Legislature over House Bill 758 (Table 32). Though details about the lawsuit were not announced at the press conference, Jim Reynolds of the Reynolds, Motl, & Sherwood law firm in Helena expressed his intent to request the case be heard by the Supreme Court, bypassing the lower courts. Reynolds asserted there were valid grounds for the lawsuit to go directly to the Supreme Court because of the statewide impact HB 758 would have on the enforcement of local smoke-free ordinances, and that all the issues in the lawsuit were constitutional law questions that the Supreme Court could decide, since there was no dispute that necessitated a fact-finding trial. Mark Staples, attorney for the Montana Tavern Association, defended HB 758 to the press, stating, “The sponsor of the bill ran it through every pertinent check that the Legislature provides,” and that “...per the legislative council’s and the code commissioner’s opinion, it passed all tests on those regards.”<sup>425, 426</sup>

**Table 32: Plaintiffs in Lawsuit Against HB 758.**<sup>429</sup>

- American Cancer Society
- American Lung Association of the Northern Rockies
- Montana Medical Association
- ProtectMontanaKids.org
- Montana Senior Citizens Association
- Helena Health Care Associates
- Citizens for a Smoke Free Bozeman
- Citizens in Support of Helena’s Second-Hand Smoke Ordinance
- United Tobacco Free Coalition
- Citizens for a Healthy Helena
- Jeri Lou Domme
- Mark Sans, M.D.
- Barbara Summers
- Terry Curey
- Alexandra Philips
- David B. King, M.D.
- Edward G. Allen, M.D.
- Crystal Bridges
- Ernesto Randophi
- Ron Bone
- Patrick Cobb, M.D.

The health groups filed the suit with the Supreme Court on July 10, 2003, claiming that HB 758 violated rights of local government, Montana’s Constitution, and state legislative rules (Table 33).<sup>427</sup> The State of Montana, represented by Attorney General Mike McGrath, responded to the health group request on August 15, 2003, stating that the lawsuit was improperly filed with the Supreme Court since other challenges were unresolved in District Court (referring to the lawsuits over Helena’s ordinance), arguing that the HB 758 case should be put on hold until those lower court lawsuits adjudicated. The State Department of Justice furthermore contended that there was no emergency that warranted a direct hearing by the Supreme Court, since the Helena ordinance had been suspended. The Justice Departments arguments did not address the

question of whether HB 758 was constitutionally valid, and only argued whether the case should be heard by the Supreme Court.<sup>428</sup>

On October 22, 2003, the Supreme Court in a 5 to 2 decision agreed to hear the health group lawsuit against HB 758, reasoning that the suit contained purely constitutional questions of law that were of major statewide importance. The health groups filed their Petitioner’s Initial Brief on Merits on November 21, 2003. Attorney General Mike McGrath filed the Respondent Brief on behalf of the State of Montana on January 3, 2004, addressing each of the four claims made by the health groups (Table 33). The Montana Supreme Court heard oral argument from both parties on April 29, 2004.<sup>429</sup>

In addition to the briefs filed by the principal parties in the case, amicus briefs were filed in support of both parties. Two amicus briefs were filed in support of the health group petitioners: one of the briefs was filed by the Montana League of Cities and Towns (arguing that the language of HB 758 did not correctly “prohibit” local government power), and the other amicus brief was jointly filed by the American Medical Association, Americans for Nonsmokers’ Rights, MHA (An Association of Montana Health Care Providers), the Montana Public Health Association, the National Center for Tobacco-Free Kids and the Tobacco Control Legal Consortium (which discussed the health hazard of second-hand smoke, the need for people to be able to create local health policies, and the fundamentally undemocratic nature of the preemption bill). In support of the State of Montana respondent’s, separate amicus briefs were filed by the

Claims Made by the Health Groups	Arguments Made by the State of Montana
1. HB 758 violates the Montana Constitution in that it contains more than one subject.	1. HB 758 deals solely with the taxation and regulation of video gaming machines and, therefore, it does not violate the single subject or clear title rules of the Montana Constitution.
2. HB 758 unconstitutionally deprives local governments and the people the right to self government.	2. HB 758 does not offend the rights of popular sovereignty and self-government expressed in the Montana Constitution, as those sections simply set forth the philosophy of state government.
3. HB 758 violates the Montana Constitution in that the people have the exclusive of self governing themselves - HB 758 does not expressly prohibit local governments from enacting indoor smoking ordinances (as permitted by state law), but rather creates only an exemption for video gaming permittees.	3. HB 758 does not violate the Montana Constitution because the Constitution simply allows a local government to act when such act is not contrary to the general laws of the state. It neither carves out substantive areas where the Legislature may not act, nor allows any local government to exempt itself from substantive legislative enactment.
4. Petitioners are entitled to attorney fees.	4. Having failed to prevail on any substantive issue, petitioners are not entitled to any attorney’s fees.

Montana Tavern Association, the Montana Restaurant Association, and the Hotel Employees and Restaurant Employees Local 427 International Union AFL-CIO, and Representative Ron Devlin

(who received a \$50 contribution from RJR in 2002) & Senator Joseph Tropila (who received \$150 in contributions of RJR from 1998-200, and \$200 in financial contributions from Mark Staples from 2000-2002). All four of these amicus briefs essentially reiterated the arguments being made by the state: HB 758 was a constitutionally valid preemption of local laws, and the legislature acted within its authority when passing HB 758.<sup>429</sup>

On December 28, 2004, the Montana Supreme Court decided in favor of the health groups, stating that HB 758 had no “force and effect”, thereby ruling that the state attempted to act outside of its power when exempting a group from a local ordinance. In agreeing with the health group's third stated argument that HB 785 did not expressly prohibited local government's from enacting clean indoor air ordinance's by granting an exemption, the Court's opinion stated,

...the State argues that, although the legislature did not use the word “prohibited,” the exemption created by the statute is tantamount to a prohibition. We disagree. To exempt is not to prohibit. A prohibition cuts off the power to act in the first instance.

...We hold, in passing [HB 758] the Legislature did not effect an express prohibition of self-governing powers...<sup>429</sup>

The Court furthermore stated that since HB 758 was an invalid law, they did not have to consider all of the other arguments presented by the health groups: “Since [HB 758] has no force and effect, we need not address the other constitutional challenges under [the] Montana Constitution,” and denied awarding attorney's fees to plaintiffs.<sup>429</sup> By ruling that HB 758 had no force and effect, local ordinances such as Helena's were no longer hindered by the state's attempted preemption.

## **GOVERNOR BRIAN SCHWEITZER AND A TOBACCO CONTROL FRIENDLY ADMINISTRATION**

On November 2, 2004, Brian Schweitzer (D) was elected the 23<sup>rd</sup> governor of Montana, taking office on January 3, 2005. Gov. Schweitzer was Montana's first Democratic governor since 1988, and his attitude towards tobacco control laws and tobacco prevention funding was vastly different from former Gov. Martz, who had consistently taken pro-tobacco industry positions. Schweitzer had repeatedly talked about protecting kids from addiction to tobacco use during his campaign, a position he formulated without direct official guidance from the state tobacco control advocates (though many health advocates that met him individually made efforts to explain the health dangers of second-hand smoke).<sup>374</sup> In the first days after Gov. Schweitzer took office, the administration was already telling members of the Legislature that the Governor wanted to use money from the MSA and tobacco taxes for smoking prevention and health care programs, because those were the intended purposes of the money expressed by voters in ballot measure I-146 (which allocated 32% of MSA funds to the Tobacco Use Prevention Program).<sup>430</sup>

As had been done in past legislative sessions, the MSA money would be allocated through House Bill 2, the state's general appropriations bill. Governor's Schweitzer's proposed budget called for 32% of the MSA money to be allocated to tobacco prevention, as dictated under I-146. Public testimony regarding the funding of the Montana Tobacco Use Prevention Program

(MTUPP) was heard on February 10, 2005 before the Joint Appropriations Subcommittee on Health and Human Services. Health advocates (including Dr. Richard Sargent, Vice Chair of the MTUPP Advisory Board, Jim Ahrens, Chariman of the Alliance for a Healthy Montana, and Kristin Page Nei of the American Cancer Society) testified that the MTUPP should be funded at \$9.3 million, the minimum level recommended by the CDC's Best Practices<sup>129</sup> (Appendix 12). They also argued, as an alternative, that MTUPP should at least be funded with 32% of the MSA money, as dictated by I-146. No opposing testimony to MTUPP funding was offered at the February hearing. MTUPP funding within HB 2 was in accordance with I-146, giving tobacco use prevention 32% (\$6.79 million per year) of the MSA money for FY 2006 and FY 2007.<sup>431</sup>

In addition to the absence of any of proposed diversions of MSA money in House Bill 2, there was no other legislation enacted during the 2005 Legislative Session that impacted the MSA money.<sup>432</sup> As such, SB 485 (the diversion of MTUPP allocated MSA money to other health programs passed by the 2003 legislature) would sunset in 2005, as was originally intended when it was passed. Thus, the MSA money for FY2006 would be allocated under I-146 as follows: 40% to the Health Care Trust Fund; 32% to Tobacco Use Prevention; 17% to CHIP; and 11% to the General Fund. House Bill 2 was signed by the Governor on May 6, 2005, thus giving the Montana Tobacco Use Prevention Program a total of \$8,020,920 for FY 2006 (\$6,789,920 from the MSA and \$875,000 from the CDC). Specific budget allocations for the program's elements in FY2006, which would begin on July 1, 2006, were not available at the time this report was written.

In a 2005 interview, Cliff Christian, Governmental Affairs Director and the Director of Advocacy for the American Heart Association in Montana, discussed the new political environment for tobacco control advocates that emerged in 2005. The Legislature had come to see the tobacco control advocates as a major political force because of the successful state and local initiatives they ran. In addition, Gov. Schweitzer was a proactive supporter of health issues. As described by Christian, after Gov. Schweitzer took office,

...the governor came to us, the Alliance for Healthy Montana... and said, "Folks, we can't thank you enough for passing this [I-149]. It's going to mean so much to the citizens fo the state of Montana. Now tell me how to spend it"... He said, "You are now my unofficial committee to tell me how I am to spend [the MSA] money."

So we sat down with the governor's budget director and it wasn't easy because they had their own agenda. They had health issues that they wanted funded as well. But we got it done. And that package stayed together and we ran it through the legislature and there was just no if, ands, or buts. That was going to be the way that health money was going to be spent. It was the most marvelous [legislative session] I have ever been involved with. And at the same time, because we had gone from being laughed at to being... at least recognized as players, that's where we got the money to fund [tobacco use prevention] and that's where the legislative leadership, both Republicans and Democrats said, "Okay, we know you're players. You've done things that nobody else thought you could do. We're not going to fight you anymore..."

Now, we didn't get full funding. We didn't get \$9.3 [as recommended by the CDC Best Practices], we got just over \$8 million [for 2006], but because of the finances of the state of Montana, we didn't want to get too greedy... So we went from \$380,000 to over \$8 million.<sup>433</sup>

## HOUSE BILL 643: THE MONTANA CLEAN INDOOR AIR ACT OF 2005

### *Health Groups and the Montana Tavern Industry Negotiate a Compromise*

On February 10, 2005, six term House member Rep. Tim Dowell (D-Kalispell) introduced House Bill 643. HB 643 as originally proposed would prohibit smoking in all public schools and public places including bars and taverns. However, as a result of a compromise between the Montana Tavern Association and two of the major health groups (American Lung Association and American Heart Association) HB 643 was amended on March 18, 2005 to exempt bars and casinos until September 30, 2009. Local smoking ordinances would also be permanently preempted. Violations would be punished with fines ranging from \$25 to \$100 for smokers, and from \$100 to \$500 for owners of establishment.

When introducing HB 643, Rep. Dowell stated that he had wanted to propose the bill for a long time, and this was his last session in the legislature due to term limits.<sup>126</sup> Indeed, when Rep. Dowell came to state health advocates with the idea for pushing a state smoke-free law, tobacco control advocates were surprised, and unsure whether they could get such a law passed. In a 2005 interview, Georgiana Gulden, Supervisor for the Tobacco Prevention Section of the DPHHS, discussed the initial reaction to Dowell's proposal:

...the general feeling that had been between Department staff and advocates was that we needed to spend two more years now focused on building grassroots support before moving forward with the Clean Air Bill. So this was not at all something that the advocates were encouraging... Representative Dowell was termed out... So when the advocates went to him and said, "We have concerns, we're not sure that the state is ready for this. We really want to spend a couple more years, now that we'll have some money, actually doing a lot of the work that needs to be done." ...He [Dowell] said, "We're going for it." So we all scrambled to catch up to him... Because at the time, when it first came out, we were... under this new administration and we didn't know what we were going to be able to do.<sup>126</sup>

Another consideration that led some tobacco control advocates to support the State Clean Indoor Air Act proposal was the threat of another state preemption attempt that was looming in the legislature. HB 661, introduced on February 11, 2005 by Representative Bob Bergen (D-Havre), essentially reintroduced the preemption provisions of HB 758, though this time carefully using the term "preemption" to adjust for the State Supreme Court's unfavorable ruling on HB 758. HB 662 was approved by the House Business and Labor Committee on February 18, 2005, and was approved by the full House on February 23, 2005.<sup>434</sup> Although HB 661 would not be heard by the Senate (since it would be made moot by the Senate's approval on April 7 of HB 643) HB 661 was lying in wait through much of 2005 Legislative Session. Tobacco control advocates were mindful of it's presence when considering HB 643, and the Montana Tavern Association was using it as leverage in their negotiations. In an April 4, 2005 interview, Dr. Richard Sargent stated,

It's [HB 661] sitting in the Senate doing nothing because the amended Clean Indoor Air Bill... is going forward. And because it's going forward, the tavern industry isn't pushing the preemption bill but it's kind of back there so if anything happens to the Clean Indoor Air Bill at all, they can put the preemption bill through and that's the end of it.<sup>125</sup>

HB 643 was referred to the House Committee on Human Services, where a hearing was held on February 16, 2005. No opponents testified at the hearing, while 12 individuals gave supporting testimony for the bill, including long time tobacco control advocates like Dr. Robert Shepard, Dr. Richard Sargent, and Cliff Christian, Governmental Affairs Director and the Director of Advocacy for the American Heart Association in Montana. The Montana Tavern Association, which had consistently opposed tobacco control laws in the past and which had ties to the tobacco industry since at least 1995 had initiated a compromise bill with some of the health groups. A number of the provisions in HB 643 resulted from these negotiations as concessions to either the tavern industry or the health groups (Table 34). Cliff Christian, in a 2005 interview, gave his account of how the negotiations started, and how they resulted in the final version of HB 643:

They [the Montana Tavern Association] approached us... They came to us because they knew that they probably would stop us in the legislature in passing the smoking ban one more time, but that we would go out to the people with an initiative, yet a third time... So they said, "Can we talk?" And I said yes. And we pulled together myself, the former Attorney General Joe Mazurek, who negotiated the Master Settlement Agreement for Montana, on one side, and the tavern lobbyist and the gaming lobbyists. The casinos lobbyists on the other side. And we sat for about a month, arguing over the specifics of a smoking ban. They wanted total exemptions with preemption for at least ten years. We wanted no preemption and no exemptions. We compromised at four years and we compromised only where bars are defined truly as bars and they could have no more than 40% of their income as food revenue. No children at all, period. Anyone under 18 years of age cannot be in a bar.<sup>433</sup>

Some health advocates were satisfied with the protections under the bill, especially members of the American Heart Association and the American Lung Association, who had negotiated with the Montana Tavern Industry in reaching the compromise. However, the American Cancer Society, which had initially agreed in exploring a compromise with the MTA, felt the other health groups had given up too much. As described by Kristin Page Nei, Director of Government Relations for the American Cancer Society,

We had a lengthy discussion about whether we should or should not negotiate [after the state preemption bill, HB 661, was passed by the full house]. We agreed to try as long as we could agree to "walk away" points. We had agreed to walk away if there was preemption and more than two years of exemptions...

AHA and ALA agreed to the compromise. ACS... couldn't support [the compromise] and felt betrayed as they thought they had a written agreement of when to walk away. When I asked the AHA person how he could walk away from our internal agreement he stated that he didn't sign anything. (He verbally agreed as did ALA to the walk away points.)

ACS received a lot of flack for not going along with the compromise.

It is my opinion that AHA and ALA got caught up in the compromise and did not think through the long-term impacts of their decision.<sup>375</sup>

**Table 34: Summary of Main Provisions in Montana Clean Indoor Air Act of 2005 (HB 643).**<sup>96, 435</sup>

- Smoking prohibited in enclosed public places beginning October 1, 2005
- Smoking prohibited in public transportation beginning October 1, 2005.
- Bars can remain smoking establishments until September 30, 2009 if they fulfill 3 requirements: 1) At least 60% of the business's annual gross income comes from the sale of alcoholic beverages or gambling receipts, or both, 2) The business may not allow any persons under 18 years of age in any area where smoking is permitted, 3) Infiltration of smoke from an exempted bar to another, nonsmoking area is prohibited.
- Ventilation, Filtration and Air Exchange Devices do not exempt establishments from the law.
- All tobacco prohibited from school property, athletic facilities, parking lots and buses beginning October 1, 2005.
- Smoking prohibition is also exempted in: a private residence (unless used for a day-care home, adult foster care home, or a health care facility); private motor vehicles; school property when used for sanctioned education; a hotel or motel room designated as a smoking room and rented to a guest (but not more than 35% of the rooms may be designated as smoking rooms); and a site used by American Indians for cultural activities.
- Signs shall be posted in a conspicuous place at all public entrances stating that smoking is prohibited.
- Local laws that are stricter than state law are prohibited (preempted) beginning October 1, 2005.
- Penalties: A person who violates the law shall be guilty of a misdemeanor and subject to a fine between \$25-\$100. Operators of establishments that violate the law shall be guilty of a misdemeanor, and shall be subject to a \$100 for a third violation, \$200 for a fourth violation; \$500 for a fifth or subsequent violation.
- Non-severability: If one part is held unconstitutional or invalid, all other parts are invalid.

Others in the tobacco control community, though cautiously supportive and hoping that the bill would accomplish its health oriented goals, also worried that the compromised bill contained loopholes that would be exploited by the tavern industry and other tobacco industry allies, like the MTA and the gambling industry. Both Dr. Robert Shepard and Dr. Richard Sargent publicly supported the benefits of a smoke-free state law, but had reservations about some of the compromise provisions. Furthermore, some health advocates, including Shepard, Sargent, and Nei, felt it was unnecessary to agree to a weak compromise bill, when the health advocates had proven they could get strong voter support in statewide initiatives. As Dr. Shepard explained,

Every time we've taken a vote to the public, we've won by 60%, which was my whole point with the compromise on the smoke-free law. Why are we compromising with such a weak compromise?... Why are we giving up? And this was my biggest argument with my colleagues in the tobacco control movement. Why are we getting such a weak statute with all of these concessions to these guys when we can walk out, do the initiative next year, and have the whole thing go state-wide-smoke-free on January 1 and they know we can do that?<sup>53</sup>

However, it was the opinion of those who pursued the HB 643 compromise that an initiative battle would be costly and difficult. Cliff Christian explained why some health advocates agreed to negotiate a compromise:

Because this time it was a different animal that we were opposing. This time we were going to be opposing small businessmen and the women who own these little Ma and Pa taverns that sold food on the side. In rural Montana, many of these taverns are the hub of the community. There may be one tavern in the entire town and that's where everybody goes Friday night for their dinner after working on the farm all week and have a few drinks and there's some dancing and the kids come over... we were going to be up against that persona. We knew it was going to be a million dollar campaign and we were concerned that the tavern and gaming association, in turn with the help of



the tobacco folks, would be able to get that and that it would be a bloody knockdown battle. Some of the healthcare folks wanted the battle. We chose - the Heart Association and the Lung Association as well as a very large majority of the Alliance for Healthy Montana - chose the compromise..."<sup>433</sup>

But critics of the compromise smoke-free law believed that the representatives from the ALA and AHA, who led the negotiations for the health groups, had taken it upon themselves to agree to a version of the law that was unacceptable to some in the state's public health community, including the ACS. As described by Dr. Shepard,

I think what really happened was that the two people who did most of the negotiations on our side got so personally invested in it and over committed before they got our buy-in on it and then just forced it down our throats. That's what really happened. There's a real interesting concept... it's called "the power of public commitment."... They made a commitment to this... they outlined the deal to us, they felt like they promised the other side this is what they could deliver without ever asking any of us if we agreed to it. And they simply would not listen.<sup>53</sup>

The House Committee on Human Services approved HB 643 on February 17, 2005 by a vote of 13 to 3, and which was then put before the full House on March 29, 2005, where it was approved in a 58 to 41 vote. At the House meeting, Rep. Dowell acknowledged that HB 643 was a compromise agreement between the tavern industry and health groups, and warned that any attempted amendments to the bill would cause the agreement to crumble. Dowell told fellow House members, "Respect the request of the participants and honor their hours of hard work."<sup>436</sup> Mark Staples, lawyer for the Montanan Tavern Association, said the bar and gambling industries agreed to support the bill because they did not want to face the likelihood of tobacco control advocates moving forward with a ballot initiative campaign for a stricter law. Staples said to reporters, "We have to be sensible about what can happen in that [initiative] process."<sup>436</sup>

After being approved by the House, HB 643 was referred to the Senate Judiciary Committee where it was approved on April 6, 2005 by a 9 to 3 vote. The bill was then sent to the full Senate, where it passed by a 40 to 10 vote on April 7, 2005. The bill was signed by Gov. Schweitzer on April 18, 2005 at a signing ceremony at the Capitol, where he called HB 643 "one of the most important pieces of legislation in a decade."<sup>437</sup>

Though the law had passed, there were still several tobacco control advocates who feared what might result from the law's shortcomings. C.B. Pearson of M&R Strategic Services, explained some of his worries about the new law:

You have the issue of the timing of it is four years... What's going to prevent them from just extending it for another two or four years? So it's a really small amendment [to make] - "We'll just go to 2011." I think our side, while we want to promote the positive aspects of policy change, we have to be very, very vigilant about what the industry has the history of: screwing us left and right. So we cannot give an inch. And my personal view is that we gave away some turf... that we didn't need to do on this. We should have set ourselves on a trajectory where it was going to go in place clearly and they would have had to take [the law without exemptions] somehow. And that's easier to say than it is to do.<sup>95</sup>

Furthermore, Pearson added that “a compromise could have been written that would have put health in the driver's seat. Instead, the agreed to compromise gives the bar and tavern industry the steering wheel.”<sup>438</sup>

### ***Implementation Problems for the Montana Clean Indoor Act of 2005***

By mid-September 2005, several issues arose regarding the state law's implementation rules and the public education campaign that would be needed to introduce it to the public. The State Health Department had failed to formulate implementation rules even as the law was about to take effect on October 1, 2005. Another problem facing the new law was the influence of MTA lobbyist Mark Staples, who had well established financial ties to the tobacco industry<sup>304, 305</sup> and who had consistently advocated for pro-tobacco industry policy positions. Staples was allowed, with the Governor's approval, to have influence on the initial development of the state's public education campaign (along with lobbyist Cliff Christianson of the AHA) by injecting input into commercials created by the health department, and attempting to replace health department ads with one's that normalized smoking and minimized the dangers of secondhand smoke. As explained by Dr. Richard Sargent,

In June we [tobacco control advocates] were asked to butt out so they [the State Health Department] could keep the Tavern Association out of the rules process. In July, Mark Staples from the Tavern Association, and the advocates for the Heart and Lung Associations met with the governor. They were not given access to the rules process but were given veto power over messaging. The initial messages that went out were pretty weak and normalized tobacco use.<sup>374</sup>

The initial ads developed by the health department and approved by the MTA focused on compliance with the law, with no emphasis on health benefits or protection of workers' health. Drafts scripts of the MTUPP radio commercials that ran in late August and early September 2005 show that the commercials emphasized fairness, the need to change with the times, and that it was “the right thing to do” (Tables 35 to 40). These radio advertisements also put emphasis on the perceived hardship that some people felt about the law, and conveyed the message that it would take time before the law was fully accepted. The lack of any messaging on the protection of workers' health is a major failing in the initial educational material, since implementation of smoke-free laws in both California and Duluth, Minnesota, show that clean indoor air laws that are framed as workplace safety issues have a greater chance of successful implementation.<sup>439, 440</sup>

**Table 35: MTUPP Radio Ad for the Montana Clean Indoor Air Act of 2005: “Smoker”**

*Male:* I'm a smoker. I should quit, I know. I'm working on it, but I'm not there yet. Still, since I know that for every one person like me who smokes, there are 4 Montanans that don't, it's not right for them to have to breathe my smoke.

That's why I think the Montana Clean Air Act, which is going into effect on October 1<sup>st</sup>, is fair. I know I won't be able to smoke in most enclosed public places, but that's all right, I'll still do business with those places... I'll adjust... and hey, maybe I'll even quit sooner.

*Annecr tag:* Change is in the air October 1<sup>st</sup>. Big Sky, clean air. Smoke Free Montana. From the Department of Public Health and Human Services.

**Table 36 : MTUPP Radio Ad for the Montana Clean Indoor Air Act of 2005: “Never Go Back”**

*Young adults - 2, interchanging lines:* Some of you might not get this, but... there are some things past that we'd never go back to...

Like VHS and beta-max.

Or Dial-up internet, phone with cords, CD's instead of MP3s, or (shudder) mullets!

And... smoking in most public places. 'Cause Montana is going smoke free!

*Annccer tag:* Change is in the air October 1<sup>st</sup>. Big Sky, clean air. Smoke Free Montana. From the Department of Public Health and Human Services.

**Table 37: MTUPP Radio Ad for the Montana Clean Indoor Air Act of 2005: “Lady”**

*50's Lady, music under:* I've been a smoker most of my life. I'm not proud of it, but... well, it happened. Now we have this deal coming to our state on October 1<sup>st</sup> - Smoke-Free Montana. You know what? I like it. Look, already around 95% of our restaurants and most all of our public building are non-smoking. 80% of all adult Montanans don't smoke at all. Going totally smoke-free - it's the right thing to do. I'm proud of Montana for doing this. It's time.

*Annccer tag:* Change is in the air October 1<sup>st</sup>. Big Sky, clean air. Smoke Free Montana. From the Department of Public Health and Human Services.

**Table 38: MTUPP Radio Ad for the Montana Clean Indoor Air Act of 2005: “Lady II”**

*50's Lady, music under:* I remember my grandmother - doing the laundry by hand, ironing pretty much everything, and cooking on a wood stove in the heat of the summer. There are some things that we just don't do anymore, and we're better for it. Like Montana going smoke-free in most public places October 1<sup>st</sup>. Sure, it might be hard on some of us... for a little while. But you know what? Like a lot of these things that are good us, we'll get used to it. It's the right thing to do. It's time.

*Annccer tag:* Change is in the air October 1<sup>st</sup>. Big Sky, clean air. Smoke Free Montana. From the Department of Public Health and Human Services.

**Table 39: MTUPP Radio Ad for the Montana Clean Indoor Air Act of 2005: “Rancher”**

*Older Rancher, music under:* Used to be, we did a lot of things that we don't do now, 'cause we know better. Like change the tractor oil in the yard. Or driving a car that blows blue smoke. You learn.

Another thing I've learned: I understand now, it's not fair to the rest of the folks in the café to have to breathe my smoke, so come October 1<sup>st</sup>, well... when I meet the boys there, I won't be having a cigarette. And that's ok. Times have changed, and I know it' the right thing to do.

*Annccer tag:* Change is in the air October 1<sup>st</sup>. Big Sky, clean air. Smoke Free Montana. From the Department of Public Health and Human Services.

**Table 40: MTUPP Radio Ad for the Montana Clean Indoor Air Act of 2005: “Rancher II”**

*Older Rancher, music under:* I'm retired and I have more time for travel these days, so last year I went on an exchange trip to Cuba, and guess what? One of the world's foremost tobacco producing countries - the land of Cuban cigars - has gone completely smoke-free.

We also went to Ireland, and whadya know, the home of Guinness, Irish Whiskey and a pub on every corner has also gone smoke-free. The whole country.

On October 1<sup>st</sup>, Montana will join the world in going mostly smoke-free, and though I know it'll be a challenge for some, I'm proud of them for making this change! I intend to thank them... with my business.

*Annccer tag:* Change is in the air October 1<sup>st</sup>. Big Sky, clean air. Smoke Free Montana. From the Department of Public Health and Human Services.

Kristin Page Nei of the American Cancer Society agreed that the messages being developed by the Department of Health were not appropriate educational material for the new law:

DPHHS has put together a media campaign. It is awful. It normalizes smoking and is from a smoker's perspective. Nothing protecting workers. [We came] to find out Mark Staples, lobbyist for the Montana Tavern Association was providing significant creative [input] and editing for the radio/tv ad campaign. ACS publicly opposed those ads. The ads are now being phased out and new more credible ones are being developed. The unfortunate issue is that the timing will be off for us to build the social norm for the law.<sup>375</sup>

Though Mark Staples did have editorial input on the educational materials that were being developed, only a few of the commercials had been completed and aired to the general public before efforts were made to replace them by tobacco control advocates, who learned of Staple's involvement in the campaign's development at the September 14, 2005 MTUPP meeting. It was also in September 2005 that there was an administrative change in the State's Tobacco Use Prevention Program. Tobacco Use Prevention Section Supervisor Georgiana Gulden resigned from her office, leaving on September 23, 2005.

Linda Lee, a state tobacco control advocate who had helped get Helena's smoke-free ordinance passed in 2001 and served as the MTUPP Advisory Board Chairman under Governor Racicot, took over as Tobacco Use Prevention Section Supervisor on September 26, 2005. Upon taking office, Lee promised that the influence from lobbyists on the state's education campaign for the smoke-free law would end, and state tobacco control advocates, knowing Lee's strong record on tobacco control, were confident that she would do so. In commenting on the problems with the public education campaign and the administrative change in the Health Department's tobacco use prevention section, Dr. Richard Sargent said, “The then head of MTUPP has since resigned and been replaced by a very strong smoke-free advocate. Mr. Staples will not have a say in things from now on.”<sup>374</sup> Kristin Page Nei of the ACS agreed that the change of leadership in the Health Department's Tobacco Prevention Section would help solve the implementation problems: “Leadership within DPHHS has been weak. Recently they have hired Linda Lee as their [MTUPP] Program Director which will help them get back on track.”<sup>375</sup>

The State Health Department held the first public hearing on the implementation rules for the 2005 Montana Clean Indoor Air Act on September 30, 2005, the day before the 2005 Clean Indoor Act was to go into effect. Draft rules were made available, which contained definitions, and procedures for qualifying for exemptions, inspections, enforcement, and complaints. The public hearing was broadcast via video telephone conference throughout the state. Though several parties spoke at the hearings, including members of the gambling industry, the tavern industry, and health groups, little progress on the actual formulation of the implementation rules was made, since state health officials were only recording testimony to be used as they considered the rules. Gambling and tavern industry representatives and proprietors called for “reasonable, common sense rules,” though no specifics were offered. Several questions from individual proprietors asked whether there would be a grace period for enforcement, since many of the exempted bars and casinos would now have to exclude children from organized events, such as holiday parties, if the law were to be enforced immediately. None of the questions were answered by state health officials, and rules would not be formulated until the end of October 2005.<sup>441, 442</sup>

Though the Department of Health did provide draft implementation rules, the draft rules provided no definition for “infiltration.” As such, much of the discussion and questioning of the new law surrounded the laws infiltration clause, which stated that no exempted smoking establishment could allow smoke to infiltrate into a non-smoking area or establishment. Thus, an exempted bar could not allow smoke to infiltrate into an adjacent non-exempted restaurant. While the law specifically disallowed the use of ventilation devices as a means of exempting an establishment from the law, whether such devices could be used to prevent infiltration into another establishment or into non-smoking areas had not been clarified. The tobacco industry has a well established history of promoting ventilation systems through third party spokespersons, though it has had little success because of the high cost and ineffectiveness of such devices.<sup>24</sup>

Among the comments and questions received at the public hearing regarding infiltration, health groups along with some gambling proprietors called for clear rules, a definition of infiltration, and an explanation of whether remodeling would qualify establishments for an exemption to the infiltration clause.<sup>441</sup> Dr. Richard Sargent, in addition to calling for clear rules, testified to the inadequacies of indoor ventilation devices to prevent infiltration of smoke from one room into another, and stated that such devices should not exempt businesses from the laws' infiltration clause. As such, Dr. Sargent asserted that businesses under one roof could not remodel sufficiently to prevent infiltration, and that minors should be excluded from all areas of a business that apply for exemption.<sup>441</sup>

When the DPHHS finally released the administrative rules for the Montana Clean Indoor Air Act at the end of October 2005, it issued responses to several of the specific concerns made during the hearings process. Among the questions addressed, the DPHHS stated there would be no grace period for enforcement of the law and that enclosed smoking areas (smoking rooms) utilizing air circulation units would not be allowed in non-smoking establishments. However, the DPHHS also refused to specifically define “infiltration,” stating, “The meaning of the word 'infiltration' has a universally understood meaning, with no clarification necessary.”<sup>443</sup>


Furthermore, the DPHHS did not agree that the law required each exempted smoking establishment to be the sole occupant of its own free-standing building.<sup>443</sup>

In addition to the lack of implementation rules when the law took effect on October 1, 2005, the advertisement materials for the law's public education campaign had not yet been completed as of mid-October 2005 (the time this report was written). A poster by ACS, AHA, and ALA which was distributed to the state and local health departments on September 14, 2005 discussed the new law, but its message focused on the health benefits aspect and did not discuss the specific implementation rules (Fig. 12). Also, educational pamphlets were distributed by the DPHHS outlining the basic provisions of the law and the benefits of smoke-free businesses, as well as a phone number to call with any questions and to file complaints against businesses violating the law. The help-line provided a caller with complaint procedures, an explanation of exemption criteria, fines for violations, and a general explanation of the law's provisions.


Though the MTUPP pamphlets did provide a help-line number to answer questions about the law, the pamphlet did not clearly state that all public establishments other than bars and casinos were covered by the law, and also stated that administrative rules had not yet been released (Fig 13). This lack of complete information on the law's administrative rules might have created confusion. Indeed, an October 4, 2005 article in the *Great Falls Tribune* reported that the state's information line had received a steady stream of calls, about 10 every hour, on its first day of operation, October 3, 2005, with most of the calls coming from business owners who wanted to know how the law affects them and how to avoid fines.<sup>444</sup> It was also not entirely clear that the help-line number was also the number people should call for violation complaints. Furthermore, by heavily emphasizing bars and casinos, the DPHHS pamphlet failed to make clear that most businesses would be required to go smoke-free when the law went into effect on October 1, 2005.

Because of the DPHHS' failure to timely formulate implementation rules and a proper educational campaign, the success of the law and its level of public acceptance is not yet know. It is, however, very likely that the success of Montana's statewide smoke-free law is dependent upon the Health Department's ability to properly enforce the law, and its ability to launch an effective public education campaign that does not normalize smoking or trivialize the Clean Indoor Air Act. Previous implementation of smoke-free laws in the United States and Canada have been the result of public education campaigns on the health dangers of secondhand smoke and active enforcement by health officials to overcome potential tobacco industry orchestrated opposition.<sup>445</sup> To accomplish this, the Montana DPHHS would have to exclude outside influences (such as lobbyists) from inappropriately controlling the law's implementation. The State Health Department must ensure the law is put into effect in a way that fulfills its purpose of protecting public health without being undermined by lobbyists from tobacco industry ally groups.


Fig. 12: Health Group Message on Montana Clean Indoor Air Act of 2005



American Cancer Society®



American Heart Association  
Fighting Heart Disease and Stroke



AMERICAN LUNG ASSOCIATION  
of the Northern Rockies

## Implementation of HB 643

**HB 643 goes into effect on October 1<sup>st</sup>**

- All elementary and high school campuses, including all buildings, parking lots, playgrounds and athletic fields will be tobacco-free.
- All buildings of college campuses will also be smoke-free
- All enclosed indoor places and all places of employment (with the exception of some bars and casinos) will be smoke-free. This includes restaurants, stores, public and private office buildings, forms of public transportation, health care facilities, auditoriums, arenas and meeting rooms open to the public.
- Children are prohibited from any area of any establishment where smoking is allowed.
- All areas of hotels will be smoke-free except for designated guest rooms. (Up to 35%)
- While many casinos and bars may go smoke-free voluntarily, some will qualify for an exemption and won't be required to go smoke-free until September 30, 2009.

**Secondhand smoke is a serious health threat.**

- Secondhand smoke causes up to 62,000 deaths from heart disease every year and is responsible for 3,000 lung cancer deaths annually in otherwise healthy nonsmokers.
- Secondhand smoke contains more than 60 known or probable carcinogens and more than 4000 chemicals including formaldehyde, arsenic, cyanide, and carbon monoxide.
- Comprehensive smoke-free workplace policies reduce tobacco related illnesses and the costs of treating them.

**Communicating with and preparing the businesses impacted by this law is going to be critical to its success.**

- We encourage all businesses to go smoke-free, regardless of whether a business qualifies for an exemption. It protects their employees and is a good business decision.
- The public must be educated on the new law and encouraged to patronize businesses that are smoke-free
- Implementation kits must be sent to all businesses impacted by the law that include details of what the law covers as well as signage.
- A hotline will be established for those who have questions about the law and to report violations. Until then, call the Montana Tobacco Use Prevention Program at 406-444-9617 with your questions.
- Enforcement protocol must be established with all parties involved, including the role of the local health departments.
- Smoke-free workplace policies encourage current smokers to quit. To help tobacco users quit, the Montana Department of Health has a statewide quitline 1-866-485-QUIT


**Everyone has the right to breathe smoke-free air.**


**No one should have to choose between a job and good health.**

- Nonsmoking bar and restaurant workers have a 30 percent higher risk of lung cancer than all other nonsmokers.
- Bartenders working an eight-hour shift in a smoky bar get the same exposure to smoke as if they had smoked half a pack of cigarettes.
- A number of economic studies show communities with comprehensive smoke-free workplace laws have not seen a negative financial impact on the hospitality industry or any other sector.
- Smoke-free policies decrease absenteeism among non-smoking employees, reduce housekeeping and maintenance costs, lower insurance rates and result in fewer smoking-related fires.

10/17/2005

Fig. 13: MTUPP Educational Pamphlet





## Smokefree Business is Good Business!


MONTANA'S NEW  
CLEAN INDOOR AIR ACT

### Understanding the Benefits of Making Your Business Smokefree

*Business owners can realize cost savings and many other positive and tangible benefits when they eliminate tobacco smoke from the workplace.*

According to Montana law, most indoor public places are required to be *smokefree* as of October 1, 2005. For the majority of businesses and workplaces in Montana, this new public health law will not alter existing policies that have been in place for years – protecting the health of both employees *and* customers. For others, it will be a time of change and commitment to a new norm – ushered in by decades of past scientific studies and debate. For those businesses and workplaces that are considering how this new law will impact their livelihood, we ask that you consider the following reasons why smokefree business makes good business sense for Montana.

- 1. The People of Montana Want Smokefree Business.**
  - ☒ *Four out of five* Montanans **DO NOT** smoke (80.1%).<sup>1</sup>
  - ☒ 71% of Montanans recently polled indicate they support a statewide law to provide consistently smokefree public places.<sup>2</sup> This represents the opinion of nearly *three-fourths* of Montanans.
- 2. Smokefree Businesses Save Money.**
  - ☒ Landlords and restaurants with smokefree premises have negotiated lower fire and property insurance premiums.<sup>3</sup> Fire insurance is commonly reduced 25-30% in smokefree businesses.<sup>4</sup>
  - ☒ Dozens of companies offer discounts on life, disability, and medical insurance for nonsmokers.
  - ☒ A survey of businesses conducted by the *Building Owners and Management Association (BOMA) International* found that the elimination of smoking from a building reduced cleaning expenses by an average of 10%. Smoking was also cited as the number one cause of fires on a BOMA fire safety survey.<sup>5</sup>
  - ☒ Making your business smokefree reduces fire risk. The National Fire Protection Association found that in 1998, smoking caused 8,700 fires in non-residential structures resulting in direct property damage of \$60.5 million.<sup>6</sup>
  - ☒ Smokefree laws add value to businesses. For example, restaurants in smokefree cities have a higher market value at resale (an average of 16% higher) than comparable restaurants located in cities covered with no formal smokefree laws.<sup>7</sup>
  - ☒ Making your business smokefree will encourage your employees who smoke to quit or reduce the number of cigarettes they smoke. Employees that smoke have about two times more lost production time per week than workers who never smoke, a cost of \$27 billion to employers.<sup>8</sup>
  - ☒ It is a fact that employees who smoke cost their employer an average of \$2,189 in workers' compensation costs compared with \$176 for nonsmokers.<sup>9</sup>



Toll-Free Info Line  
866-787-5AIR  
(866-787-5247)



- ⓧ The U.S. Centers for Disease Control and Prevention (CDC) puts an annual \$3,391 price tag on each employee who smokes: \$1,760 in lost productivity and \$1,623 in excess medical expenditures.<sup>10</sup> In addition, estimated costs associated with secondhand smoke's effects on nonsmokers can add up to \$490 per smoker per year.<sup>11,12</sup>

### 3. Smokefree Businesses Help Save Lives.

- ⓧ The health consequences from exposure to secondhand smoke are clear. Secondhand smoke is a known human carcinogen, meaning it causes **CANCER**. Secondhand smoke is associated with an increased risk for lung cancer and coronary heart disease in nonsmoking adults.<sup>13, 14, 15</sup>
- ⓧ Working a shift in a smoky bar is equivalent to smoking nearly a pack of cigarettes per day!<sup>16</sup>
- ⓧ Waitresses die from higher rates of lung and heart disease than any other female occupational group – 4 times as many lung cancer deaths and 2-1/2 times as many heart disease deaths.<sup>16</sup>
- ⓧ Hospitality businesses located in smokefree cities have, on average, 84% less indoor air pollution than restaurants, bars, pool halls, bingo parlors, and bowling alleys in cities that do not have smokefree protection. Smokefree bars and restaurants (with no smoking in attached bars) have 90% less indoor air pollution; bowling alleys, bingo parlors, and pool halls have 76% less; and restaurants that allow smoking in attached bars have 58% less indoor air pollution.<sup>17</sup>
- ⓧ Each year, an estimated 175 Montanans who never themselves smoked, die from breathing someone else's tobacco smoke in the workplace or home.<sup>18</sup>

### 4. Smokefree Business Just Makes Good Sense!

- ⓧ Smokefree air is very popular with the public. According to a national "Zagat Survey" of more than 110,000 restaurant patrons in the U.S., 4 out of 5 said that all restaurants should be smokefree, and 32% said they would go out to eat more often if restaurants were smokefree.<sup>19</sup>
- ⓧ Many recent studies show that comprehensive smokefree laws **DO NOT** have adverse economic effects (e.g. reduced sales) on restaurants and other businesses.<sup>20, 21, 22</sup>

### Need More Information on Montana's New Clean Indoor Air Act?

Contact the **Montana Tobacco Use Prevention Program** for more information and for the names of local educators or representatives who may be able to answer your questions.

#### Montana Tobacco Use Prevention Program

PO Box 202951

Helena, MT 59620-2951

Toll-Free Information Line: 866-787-5AIR (866-787-5247)

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## Healthier Communities... Healthier Families



### Introducing a New Standard for Improved Quality of Life in Montana!

Montana's New Clean Indoor Air Act provides citizens with protection from exposure to secondhand tobacco smoke in the workplace, and in public places such as restaurants, shopping areas, schools, bowling alleys, and some bars. The result? Healthier communities and families in Montana.

#### ⊗ Secondhand Smoke Causes Cancer and Makes Many People Who Don't Smoke Sick. The New Law Will Offer Protection.

- Secondhand smoke is a mixture of the smoke given off by the burning end of a cigarette or other tobacco product and the smoke exhaled by smokers.<sup>1,2</sup>
- Secondhand smoke is hazardous and contains a mixture of more than 4,000 chemicals, at least 50 of which are known or probable human carcinogens. Breathing it causes CANCER.<sup>3,4</sup>
- The U.S. Surgeon General has concluded that exposure to secondhand smoke is a common public health hazard that is *completely preventable*. Exposure can be dramatically reduced by eliminating smoking in all enclosed public places and workplaces.<sup>5,6,7,8</sup>

#### ⊗ Montana's new law will help to reduce needless death.

- Each year, an estimated 175 Montanans who never themselves smoked, die from breathing someone else's tobacco smoke in the workplace or home.<sup>9</sup>
- Each year in the U.S., secondhand smoke is associated with up to 62,000 heart disease deaths and 3,000 lung cancer deaths.<sup>1</sup>

#### ⊗ Montana's new law will help to improve the health of citizens.

- Breathing secondhand smoke is associated with an increased risk for sudden infant death syndrome (SIDS), asthma, bronchitis, and pneumonia in children.<sup>1,10</sup>
- Each year, secondhand smoke is associated with 8,000 – 26,000 new asthma cases in children and an estimated 150,000 – 300,000 new cases of bronchitis and pneumonia in children less than 18 months old (7,500 – 15,000 of which require hospitalization).<sup>4,11,12</sup>
- A study in Helena, Montana found that the number of heart attack victims admitted to the regional hospital dropped by nearly 60% during the first 6 months of a new smokefree community ordinance taking effect.<sup>13</sup>
- Regular exposure to secondhand smoke, such as in restaurants and bars, increases one's chance of stroke by as much as 50 percent.<sup>14</sup>
- Not only will Montana's new law reduce exposure to secondhand smoke among workers and the public, it will help smokers quit and/or reduce the number of cigarettes they smoke and will provide a stronger positive behavioral influence for children.<sup>15</sup>

MONTANA'S NEW  
CLEAN INDOOR AIR ACT

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- ❌ **Montana's new law will allow citizens to participate more actively and fully in their communities.**
  - The short-term effects of breathing secondhand smoke such as wheezing, asthma attacks, shortness of breath, and excessive coughing – last for hours, and sometimes days after exposure.<sup>16</sup>
  - As little as 30 minutes of exposure to secondhand smoke puts certain individuals at greater risk of heart attack. The Centers for Disease Control (CDC) warns that people with known heart disease should avoid all indoor environments that permit smoking.<sup>16</sup>
- ❌ **Montana's new law extends important protection to workers who traditionally have been exposed to high levels of secondhand smoke.**
  - Secondhand smoke in bars and casinos is 3 to 6 times more concentrated than in other smoke-filled workplaces. Secondhand smoke levels in restaurants are nearly TWICE those found in smoke-filled offices.<sup>17</sup>
  - Food service workers have a 50% greater risk of dying from lung cancer than the general population, in part, because of secondhand smoke exposure in the workplace.<sup>18,19</sup>
  - Breathing the air for just two hours in a smoky bar produces similar health effects as smoking FOUR cigarettes.<sup>20</sup>
  - Studies have shown marked improvement in bar workers' health within the first few months of implementing a smokefree policy.<sup>21</sup>
- ❌ **Montana communities & citizens strongly support a statewide smokefree law.**
  - 71% (nearly three-fourths) of Montanans polled support the statewide smokefree public places law.<sup>22</sup>

### **Need More Information on Montana's New Clean Indoor Air Act?**

Contact the **Montana Tobacco Use Prevention Program** for more information and for the names of local educators or representatives who may be able to answer your questions.

**Montana Tobacco Use Prevention Program**  
 PO Box 202951  
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Montana's *NEW...*

## Clean *Indoor Air Act*

### ANSWERS to Your Questions

*It is important for business and property managers to recognize that the Montana Legislature enacted the Montana Clean Indoor Air Act to protect the health of Montana's workers and citizens.*

#### **Q: What is Montana's New Clean Indoor Air Act?**

**A:** The **Montana Clean Indoor Air Act**, is an act of the Montana Legislature to establish protections for all Montanans from the hazards of secondhand smoke in all elementary and secondary schools, and requires most work places and places open to the public throughout the state to be smokefree. The objective of the Act is to protect students, employees, and the public from the preventable health problems caused by breathing secondhand tobacco smoke.

#### **Q: What places are covered by the new law?**

**A:** With limited exceptions, the law prohibits using tobacco products in all publicly funded school and school properties and eliminates tobacco smoke from enclosed public places, including restaurants, stores, public and private office buildings, trains, buses, and other forms of public transportation, health care facilities, auditoriums, arenas, assembly facilities, meeting rooms open to the public, bars, community college facilities, facilities of the Montana university system, and local government buildings.

#### **Q: When does the new law go into effect?**

**A:** The law goes into effect on October 1, 2005. However, limited exceptions may be granted until October 1, 2009, for the following:

- Some bars that meet the provisions of the law may qualify for an exception until October 1, 2009: In order to qualify for this exception, the following conditions must be met:
  1. At least 60% of the establishment's revenue comes from alcohol sales, gambling, or both;
  2. There can be no infiltration of tobacco smoke into an adjacent nonsmoking area.
- Private residences (unless the residence is used as family or group day-care or adult foster care homes, or health care facilities);
- Private vehicles;
- Hotel rooms designated as smoking rooms (a hotel or motel may designate no more than 35 percent of its rooms as smoking rooms); and
- Sites being used in connection with the practice of cultural activities by American Indians in accordance with the American Indian Religious Freedom Act, 42 U.S.C. 1996 and 1996A.

A licensed alcohol establishment may not allow any member of the public under age 18 to be present in any part of the establishment where smoking is permitted. Local government buildings must be smokefree by no later than July 1, 2006.



**Q: How is a bar defined in the new law?**

A: A bar means an establishment licensed to serve alcoholic beverages for consumption by guests or patrons on the premises and in which serving food is only incidental to the service of alcoholic beverages and/or gambling operations. This includes but is not limited to taverns, night clubs, cocktail lounges, and casinos. The law stipulates that at least 60 percent of an establishment's annual gross income must come from the sale of alcoholic beverages or gambling receipts, or both, to qualify for the exception previously noted.

**Q: What are the penalties for violations of the new law?**

A: An individual who owns, manages, operates, or otherwise controls a public place or place of employment and who permits smoking in that place is guilty of a misdemeanor after a third violation within a three-year period and would be warned, reprimanded, or punished as follows:

- A warning for the first violation
- A written reprimand for the second violation
- Within a three year period, a fine of:
  - ✓ \$100 for a third violation
  - ✓ \$200 for a fourth violation
  - ✓ \$500 for a fifth or subsequent violation

\*The law also stipulates that an individual (employee or customer) who smokes in an area where smoking is prohibited is guilty of a misdemeanor and subject to a fine of between \$25 and \$100.

**Q: Who is responsible for enforcing the new law?**

A: The law directs the **Montana Department of Public Health and Human Services** (Department) and the Department's designees, local boards of health, and the boards' designees under the direction of the Department to be responsible for supervising and enforcing the law.

**Q: What should I be doing NOW, before the *Administrative Rules* are officially released?**

A: Since tobacco smoke causes health problems, disease and death, the best thing to do is to go smokefree for the health of your employees and your customers. Going smokefree is what most businesses will need to do to comply with the new law. Look for additional materials in the mail from the Montana Tobacco Use Prevention Program on going smokefree.

**Q: Where can I see the new law in its entirety?**

A: The full law may be seen in .PDF format at:

<http://data.opi.state.mt.us/bills/2005/BillPdf/HB0643.pdf>

It may also be seen in HTML format at:

<http://data.opi.state.mt.us/bills/2005/billhtml/HB0643.htm>

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## CONCLUSION

Tobacco control policy making in Montana has evolved greatly since 1979, when the state's first clean indoor air act was passed. For most of the 1980s, clean indoor air policies were initiated by individual legislators, with only inconsistent and unorganized support from tobacco control advocates and local health groups. There was no organized tobacco control movement on the statewide level. Although some tobacco tax increases were passed in 1984 and 1989, these were initiated by legislators solely to create revenue at times when the state needed additional money, and the strategy of supporting tobacco taxes to reduce smoking had not yet been utilized by health advocates.

Unlike the lack of organized tobacco control advocacy in the state, the tobacco industry in 1979 was already highly organized in opposing tobacco control legislation. They organized opposition, which falsely appeared as grass roots movements, in order to oppose the 1979 Clean Indoor Air Act and the tobacco tax increases in 1984 and 1989.

Tobacco control advocacy took its first step towards becoming an organized, statewide movement when local health professionals attempted the statewide ballot initiative to increase the tobacco tax in 1990. Unlike previous tobacco tax increases, this proposed tax increase had a specific health purpose: to reduce cigarette use in the state. The tobacco industry defeated the initiative with a comprehensive and sophisticated media campaign. Speaking through front groups and ally groups, the tobacco industry exploited the anti-tax sentiments and economic fears of the voters. Though the initiative campaign failed, the issue of second-hand smoke was given state attention.

At the end of the 1990s, local communities would pass smoke-free ordinances, beginning with Missoula in 1999, and continuing to Great Falls in 2000 (the state's weakest smoke-free ordinance), Helena in 2001 (the state's strongest smoke-free ordinance), and Bozeman in 2002. These smoke-free ordinances would be opposed consistently by tobacco industry ally groups, especially the Montana Tavern Association. In particular, the city of Helena became a focal point of tobacco control policy debates before its passage, followed by several failed attempts by the tobacco industry and its ally groups to defeat it (a referendum vote, two lawsuits, and two attempts at state preemption). Through highly organized campaigns aimed at both the public and local lawmakers, tobacco control advocates on the local level (with the exception of Great Falls) were able to pass and maintain significant health protections for its citizens against the dangers of second hand smoke.

On the statewide level, tobacco control advocates still had not organized public media campaigns or built a political infrastructure of legislative support when the state received its first payment from the Master Settlement Agreement (MSA) in 1999. As such, they were unprepared to oppose several MSA money allocation proposals to various non-health related government purposes made by a variety of state legislators, many of whom had direct or indirect ties to the tobacco industry. Health advocates choose to focus their efforts on directly lobbying the legislature with the support of Governor Marc Racicot, who was sympathetic to both health and

tobacco control programs. Though this strategy proved minimally successful (they did better than other states that dedicated no money to tobacco use prevention), tobacco control advocates likely would have been more successful in obtaining program funding if they had dedicated more of their efforts to public campaigning and educational efforts in order to get greater political support. Indeed, after receiving a minimal amount of tobacco use prevention funding in the 1999 Legislative Session, tobacco control and health advocates shifted to a strategy aimed at utilizing general public support, and brought forth a statewide initiative that led to the passage of Constitutional Amendment 35, which dedicated 40% of the MSA money to a health care trust fund. This was the first successful attempt by tobacco control and health advocates in passing tobacco related statewide legislation, and statewide initiatives would prove to be their most effective strategy in passing future tobacco control policies.

Under the administration of Republican Governor Judy Martz (2001-2004), almost all of the successes achieved by state tobacco control advocates were severely dismantled. State funding for tobacco use prevention programs was reduced in 2001 (from \$3.5 million per year to \$0.5 million per year) and 2002 (to \$0.38 million per year). Gov. Martz consistently took pro-tobacco industry positions on proposed policies throughout her term as governor. The Republican Governor even opposed a Republican legislative proposal to raise the cigarette tax (from 18 cents to 70 cents) during a time of severe state budget deficit, which was also publicly opposed by tobacco industry lobbyists throughout the 2003 legislative session. In addition, Governor Martz politically restrained the Department of Health's tobacco use preventing efforts by preventing them from running media and public awareness campaigns. Martz herself had strong ties to the tobacco industry. Her chief political advisor, Mark Baker, was a tobacco industry lobbyist, as was his law partner, Jerome Anderson (of the Anderson & Baker Law Firm). Furthermore, Gov. Martz served as honorary chairperson of the Montana Majority Fund, a conservative political group that received thousands of dollars in contributions from the tobacco industry.

Despite the anti-tobacco control administration that existed from 2001 to 2004, state tobacco control advocates continued to pursue stronger policies. Again bringing the issue of tobacco prevention to Montana voters, they successfully passed an initiative in 2002 to dedicate 32% of the MSA money towards tobacco prevention programs (though the majority of this money would be legislatively diverted to other health programs until 2005). In 2003, state tobacco control advocates also successfully defeated two attempts at state preemption, both of which were strongly supported by tobacco industry ally groups, including the Montana Tavern Association. The first attempt was defeated during the 2003 Legislative Session, while the second was ruled as invalid by the State Supreme Court in a lawsuit brought by the health groups. Also in 2003, tobacco control advocates successfully supported a legislative increase in the tobacco tax (from 18 cents to 70 cents), and in 2004 increased the tobacco tax even more with another statewide initiative, this time raising the tobacco tax to the fourth highest in the nation (from 70 cents to \$1.70 per pack).

After Governor Brian Schweitzer took office in January 2005, tobacco control advocates gained an administration that was sympathetic to tobacco prevention. With the Governor's support, the 2005 Legislature approved state funding of tobacco prevention programs with 32% of the MSA money. It was also during the 2005 Legislative Session that the Montana's Clean Indoor Air Act was proposed which, to many in the state's public health community, represented the

positive culmination of over 3 decades of tobacco control advocacy. However, the new state law proved to be point of conflict among the major health groups (American Cancer Society, American Heart Association and American Lung Association) and tobacco control advocates. Some of the groups (AHA and ALA) agreed to a negotiated compromise of the bill with the Montana Tavern Association (MTA) in order to insure its passage, while others (including the ACS) thought the compromise had sacrificed public health for a weak law, since it exempted bars and taverns for 4 years and preempted local ordinances.

The Montana Clean Indoor Air Act of 2005 experienced further difficulties even as it was going into effect. On the law's official start date, October 1, 2005, the State Health Department had not formulated implementation rules. Thus, many feared that the delay in proper administrative rules would cause confusion over the new law and be a barrier to its overall public acceptance. Furthermore, it was discovered that the Montana Tavern Association, which had negotiated the new law with the AHA and ALA, was given access to the public education campaign surrounding the advertisements about the law, and that MTA lobbyists provided creative and editorial input to the creation of the ads. Although a change in supervision at the Health Department's Tobacco Prevention Section was considered by tobacco health advocates (and critics of the law) as a strong step to solving these problems, it remains to be seen whether the Department of Health and Human Services will exclude the influence of tobacco industry ally groups such as the MTA from the implementation process of the law.

After years of great progress and achieving significant health protections against smoking and second-hand smoke on both the local and state level, the coalition of tobacco control advocates in Montana now face the danger of having the state's clean indoor air law undermined by the tobacco industry and its allies. While tobacco control advocates in Montana have learned to take their message to the public, which has given them consistent support in ballot initiatives, some of them have failed to recognize a newer, more sophisticated tobacco industry strategy: the seemingly reasonable compromise that, in truth, advances tobacco industry interests. Through negotiation and the promise of a broadly accepted law, some state health groups (particularly the ALA and AHA) have agreed to cooperate with the Montana Tavern Association and have been steered into agreeing to a relatively weak law (which preempts some stronger local ordinances) and into a weak implementation process. Given their past success on the local level and at defeating preemption in the legislature, tobacco control advocates might have fared better by continuing to safeguard local ordinances, rather than jumping into a state law they seem unable to completely control.

The DPHHS further hindered tobacco control by its failure to promptly provide implementation rules (which were not released until the end of October 2005), and by allowing pro-tobacco industry influences on the implementation process. If the DPHHS can exclude such inappropriate influence, the Montana Clean Indoor Air Act of 2005 could bring a new level of health protection for Montana citizens. However, if the DPHHS fails to prevent tobacco industry ally groups from undermining the law, clean indoor air policies will likely be rejected by the general public and the law itself will be vulnerable to further weakening in future legislative sessions. It remains to be seen whether the DPHHS will perform adequately in this area and fulfill its purpose of safeguarding public health.



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## APPENDICES

### Appendix 1 : Tobacco Industry Contributions and Legislator Policy Scores

#### PART A: 2005 MONTANA HOUSE OF REPRESENTATIVES

LAST NAME	FIRST NAME	PTY	LEG	DIST	TOBACCO CONT'S 1999-2000	TOBACCO CONT'S 2001-2002	TOTAL TOBACCO CONT'S 1999-2002	AVG. POLICY SCORE
Andersen	Joan	R	house	23	\$0	\$0	\$0	2.0
Arntzen	Elsie	R	house	53	\$0	\$0	\$0	3.7
Balyeat	John	R	house	32	\$0	\$100	\$100	2.3
Barrett	Debby	R	house	34	\$0	\$0	\$0	1.7
Becker	Arlene	D	house	18	\$0	\$75	\$75	1.8
Bergren	Bob	D	house	90	\$0	\$0	\$0	2.3
Bixby	Norma	D	house	5	\$0	\$0	\$0	8.0
Branae	Gary	D	house	17	\$0	\$0	\$0	6.3
Brown	Roy	R	house	14	\$0	\$0	\$0	2.3
Brown	Dee L	R	house	83	\$0	\$75	\$75	2.7
Butcher	Edward	R	house	29	\$0	\$0	\$0	1.3
Buzzas	Rosalie	D	house	93	\$0	\$0	\$0	8.7
Caferro	Mary	D	house	80	\$0	\$0	\$0	9.8
Callahan	Tim	D	house	43	\$0	\$0	\$0	7.3
Campbell	Margaret	D	house	31	\$0	\$0	\$0	7.3
Clark	Paul	D	house	72	\$0	\$0	\$0	7.7
Cohenour	Jill	D	house	51	\$0	\$0	\$0	9.8
Dickenson	Sue	D	house	47	\$0	\$0	\$0	9.0
Dowell	Tim	D	house	78	\$0	\$0	\$0	9.5
Driscoll	Robyn	D	house	51	\$0	\$0	\$0	5.0
Eaton	Emelie Jay	D	house	22	\$0	\$0	\$0	6.0
Everett	George	R	house	84	\$0	\$0	\$0	4.7
Facey	Tom	D	house	67	\$50	\$0	\$50	7.7
Franklin	Eve	D	house	42	\$0	\$100	\$100	8.5
Furey	Kevin	D	house	91	\$0	\$0	\$0	9.3
Gallik	Dave	D	house	52	\$0	\$150	\$150	8.5
Galvin-Halcro	Kathleen	D	house	48	\$50	\$100	\$150	3.5
Glaser	William	R	house	44	\$200	\$0	\$200	3.0
Golie	George	D	house	44	\$100	\$0	\$100	6.7
Grinde	Wanda	D	house	12	\$400	\$0	\$400	7.0
Groesbeck	George	D	house	74	\$0	\$0	\$0	6.0
Gutsche	Gail	D	house	66	\$0	\$0	\$0	9.0
Hamilton	Robin	D	house	92	\$0	\$0	\$0	8.7
Harris	Christopher	D	house	30	\$0	\$0	\$0	8.7
Hawk	Ray	R	house	62	\$0	\$0	\$0	3.3
Heinert	Ralph	R	house	1	\$0	\$0	\$0	3.3
Hendrick	Gordon	R	house	14	\$0	\$0	\$0	4.0
Henry	Teresa	D	house	96	\$0	\$0	\$0	8.7
Himmelberger	Dennis	R	house	18	\$0	\$75	\$75	1.3
Hiner	Cynthia	D	house	85	\$0	\$0	\$0	5.0
Jackson	Verdell	R	house	79	\$50	\$50	\$100	1.7
Jacobson	Hal	D	house	54	\$0	\$150	\$150	9.7
Jayne	Joey	D	house	73	\$0	\$0	\$0	6.0
Jent	Larry	D	house	29	\$50	\$0	\$50	7.3
Jones	Llew	R	house	27	\$0	\$0	\$0	4.3
Jones	William	R	house	9	\$0	\$0	\$0	4.3
Jopak	Mike	D	house	80	\$0	\$0	\$0	8.0
Juneau	Carol C	D	house	85	\$0	\$0	\$0	9.3
Kaufmann	Christine	D	house	53	\$0	\$0	\$0	9.8
Keane	Jim	D	house	36	\$0	\$0	\$0	3.7
Klock	Harry	R	house	83	\$0	\$0	\$0	2.0
Koopman	Roger	R	house	70	\$0	\$0	\$0	0.7
Lake	Bob	R	house	60	\$0	\$100	\$100	1.0
Lambert	Carol	R	house	1	\$0	\$0	\$0	0.7

Appendix 1: Tobacco Industry Contributions and Legislator Policy Scores

**PART A (continued): 2005 MONTANA HOUSE OF REPRESENTATIVES**

LAST NAME	FIRST NAME	PTY	LEG	DIST	TOBACCO CONT'S 1999-2000	TOBACCO CONT'S 2001-2002	TOTAL TOBACCO CONT'S 1999-2002	AVG. POLICY SCORE
Lange	Michael	R	house	19	\$0	\$0	\$0	1.7
Lenhart	Ralph	D	house	2	\$0	\$0	\$0	4.0
Lindeen	Monica J	D	house	7	\$0	\$100	\$100	5.7
Maclaren	Gary	R	house	43	\$0	\$0	\$0	2.0
Maedje	Rick	R	house	81	\$0	\$0	\$0	0.0
Malcolm	Bruce	R	house	25	\$0	\$0	\$0	0.7
Matthews	Gary	D	house	4	\$0	\$0	\$0	5.0
McAlpin	Dave	D	house	94	\$0	\$0	\$0	9.3
McGillvray	Joe	R	house	50	\$0	\$0	\$0	2.7
McKenney	Joe	R	house	49	\$0	\$200	\$200	0.3
McNutt	Walter	R	house	37	\$100	\$0	\$100	0.3
Mendenhall	Scott	R	house	39	\$0	\$0	\$0	4.3
Milburn	Mike	R	house	19	\$0	\$0	\$0	3.3
Morgan	ny (Armstrong)	R	house	21	\$0	\$125	\$125	1.3
Musgrove	John L	D	house	91	\$0	\$75	\$75	6.3
Noennig	Mark E	R	house	9	\$50	\$0	\$50	6.8
Noonan	Art	D	house	73	\$75	\$0	\$75	5.3
Olson	Alan	R	house	8	\$50	\$50	\$100	2.0
Olson	Bernie	R	house	76	\$0	\$0	\$0	1.7
Parker	John	D	house	45	\$0	\$0	\$0	7.3
Peterson	Jim	R	house	94	\$0	\$100	\$100	2.0
Raser	Holly	D	house	70	\$0	\$0	\$0	7.3
Rice	Diana	R	house	33	\$0	\$0	\$0	3.3
Ripley	Rick	R	house	50	\$0	\$200	\$200	1.3
Roberts	Don	R	house	10	\$0	\$0	\$0	8.8
Ross	Jack	R	house	24	\$0	\$0	\$0	1.7
Sales	Scott	R	house	27	\$0	\$0	\$0	2.3
Sesso	Jon	R	house	76	\$0	\$0	\$0	7.0
Sinrud	John	R	house	31	\$0	\$0	\$0	2.7
Small-Eastman	Veronica	D	house	6	\$0	\$0	\$0	7.3
Sonju	Jon	R	house	7	\$0	\$0	\$0	2.0
Stahl	Wayne	R	house	35	\$0	\$0	\$0	1.7
Stoker	Ron	R	house	59	\$0	\$0	\$0	1.0
Taylor	Janna	R	house	11	\$50	\$0	\$50	1.3
Villa	Dan	D	house	86	\$0	\$0	\$0	8.7
Wagman	Pat	R	house	26	\$0	\$0	\$0	1.7
Waitschies	Karl A	R	house	96	\$0	\$0	\$0	1.7
Wanzenreid	David E	D	house	68	\$0	\$0	\$0	8.7
Ward	John	R	house	84	\$0	\$0	\$0	8.5
Warden	Bill	R	house	63	\$0	\$0	\$0	1.7
Wells	Jack	R	house	69	\$0	\$0	\$0	1.7
Wilson	William	D	house	22	\$0	\$0	\$0	7.7
Windham	Jeanne	D	house	12	\$0	\$0	\$0	7.3
Windy Boy	Jounathan	D	house	32	\$0	\$0	\$0	4.0
Wiseman	Brady	D	house	28	\$0	\$0	\$0	7.3
Witt	John E	R	house	89	\$50	\$100	\$150	2.3

**PART B: 2005 MONTANA SENATE**

LAST NAME	FIRST NAME	PTY	LEG	DIST	TOBACCO CONT'S 1999-2000	TOBACCO CONT'S 2001-2002	TOTAL TOBACCO CONT'S 1999-2002	AVG. POLICY SCORE
Bales	Walter	R	senate	1	\$0	\$150	\$150	1.7
Balyeat	Joe	R	senate	34	\$0	\$0	\$0	1.5
Barkus	Gregory D	R	senate	39	\$0	\$350	\$350	1.3
Black	Jerry W	R	senate	44	\$0	\$200	\$200	1.3
Brueggeman	John	R	senate	6	\$0	\$0	\$0	0.7



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Appendix 1: Tobacco Industry Contributions and Legislator Policy Scores

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**PART B (continued): 2005 MONTANA SENATE**

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LAST NAME	FIRST NAME	PTY	LEG	DIST	TOBACCO		TOTAL TOBACCO CONT'S 1999-2002	AVG. POLICY SCORE
					CONT'S 1999-2000	CONT'S 2001-2002		
Cobb	John	R	senate	9	\$0	\$0	\$0	6.3
Cochiarella	Vicki	D	senate	47	\$150	\$0	\$150	2.3
Cooney	Mike	D	senate	26	\$0	\$0	\$0	9.5
Cromley	Brent R	D	senate	9	\$0	\$0	\$0	7.3
Curtiss	Aubyn	R	senate	41	\$0	\$50	\$50	1.3
Ellingson	Jon	D	senate	33	\$0	\$0	\$0	8.3
Elliot	Jim	D	senate	7	\$0	\$0	\$0	8.0
Esp	John	R	senate	13	\$0	\$0	\$0	4.8
Essman	Jeff	R	senate	28	\$0	\$0	\$0	1.7
Gallus	Steve	D	senate	37	\$0	\$0	\$0	5.0
Gebhardt	Kelly	R	senate	4	\$0	\$75	\$75	1.7
Gillan	Kim	D	senate	24	\$0	\$0	\$0	6.7
Grimes	Duane	R	senate	20	\$0	\$0	\$0	4.5
Hansen	Ken	D	senate	46	\$0	\$0	\$0	5.3
Harrington	Dan	D	senate	38	\$200	\$0	\$200	7.7
Hawks	Bob	D	senate	33	\$0	\$0	\$0	2.7
Keenan	Bob	R	senate	38	\$0	\$0	\$0	1.0
Kitzenberg	Sam	R	senate	18	\$50	\$0	\$50	7.0
Laible	Rick	R	senate	30	\$0	\$150	\$150	0.7
Larson	Lane	D	senate	22	\$0	\$0	\$0	5.3
Laslovich	Jesse	D	senate	43	\$0	\$0	\$0	6.0
Lewis	Dave	R	senate	42	\$0	\$0	\$0	4.5
Lind	Greg	D	senate	50	\$0	\$0	\$0	9.7
Mangan	Jeff	D	senate	23	\$50	\$50	\$100	5.0
McGee	Dan	R	senate	11	\$0	\$75	\$75	1.3
Moss	Lynda	D	senate	26	\$0	\$0	\$0	5.3
Oneil	Jerry	R	senate	3	\$0	\$0	\$0	1.3
Peas	Gerald	D	senate	21	\$0	\$0	\$0	6.3
Perry	Gary L	R	senate	16	\$0	\$0	\$0	1.7
Roush	Glenn A	D	senate	43	\$0	\$200	\$200	5.0
Ryan	Don	D	senate	8	\$0	\$0	\$0	6.7
Schmidt	Trudi	D	senate	21	\$50	\$75	\$125	8.8
Seteinbeisser	Donald	R	senate	19	\$0	\$0	\$0	2.0
Shockley	Jim	R	senate	45	\$0	\$0	\$0	2.3
Smith	Frank	D	senate	16	\$50	\$0	\$50	6.0
Squires	Carolyn	D	senate	48	\$0	\$0	\$0	4.7
Stapleton	Corey	R	senate	27	\$0	\$0	\$0	1.7
Story	Robert R Jr	R	senate	12	\$100	\$0	\$100	2.0
Tash	Bill	R	senate	36	\$0	\$0	\$0	2.0
Tester	Jon	D	senate	45	\$0	\$200	\$200	8.5
Toole	Ken	D	senate	15	\$0	\$0	\$0	9.3
Toropila	Joseph	D	senate	24	\$150	\$100	\$250	4.3
Weinberg	Dan	D	senate	2	\$0	\$0	\$0	8.0
Wheat	Mike	D	senate	14	\$0	\$0	\$0	8.3
Williams	Carol	D	senate	46	\$0	\$0	\$0	9.0
<b>TOTAL (HOUSE AND SENATE):</b>					\$2,075	\$3,600	\$5,675	4.8

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Appendix 2A: Tobacco Industry Campaign Contributions to 2002 Montana House of Representative Candidates

LAST	FIRST	PTY	LEG. DIST.	BW	LOR	PM	RJR	STC	TI	UST	JEROME ANDERSON	LEO BERRY	MARK BAKER	MARK STAPLES	MTA	HOSP. PAC	TOTAL TOB. CONTRIBUTIONS
Balyeat	Joe	R	house	32										\$100			\$100
Becker	Arlene	D	house	18										\$75			\$75
Bookout-Reinicke	Sylvia	R	house	71			\$50							\$75			\$125
Brown	Dee L	R	house	83										\$75			\$75
Brueggeman	John	R	house	74										\$100			\$100
Clancy	Gilda	R	house	51								\$100					\$100
Clark	Edith J	R	house	88											\$100		\$100
Clarke	David W	R	house	81											\$75		\$75
Devlin	Ronald R	R	house	3			\$50										\$50
Fisher	Stanley	R	house	75			\$50										\$50
Foss	Suzy	R	house	59												\$75	\$75
Franklin	Eve	D	house	42										\$100			\$100
Fritz	Nancy Rice	D	house	69										\$75			\$75
Fuchs	Daniel C	R	house	15										\$100			\$100
Gallik	Dave	D	house	52										\$75	\$75		\$150
Gallus	Steve	D	house	35										\$50			\$50
Galvin-Halcro	Kathleen	D	house	48												\$100	\$100
Himmelberger	Dennis	R	house	18										\$75			\$75
Jackson	Verdell	R	house	79			\$50										\$50
Jacobson	Hal	D	house	54										\$75	\$75		\$150
Johnston	Burt M	D	house	95										\$50	\$100		\$150
Lake	Bob	R	house	60								\$100					\$100
Laszloffy	Jeff	R	house	22										\$100			\$100
Lawson	Bob	R	house	80										\$75			\$75
Lindeen	Monica J	D	house	7										\$100			\$100
Mood	Doug	R	house	58										\$100			\$100
Morgan	(Armstrong)	R	house	21										\$50	\$75		\$125
Musgrove	John L	D	house	91										\$75			\$75
Nigro	William J		house	14										\$75			\$75
Olson	Alan	R	house	8			\$50										\$50
Peterson	Jim	R	house	94								\$100					\$100
Robinson	Bob	R	house	53								\$100					\$100
Rowley	Mat	R	house	43								\$100					\$100
Schrumpf	Clarice	R	house	12			\$50										\$50
Somerville	Roger	R	house	78								\$100					\$100
Stelter	John	R	house	52								\$100					\$100
Whitaker	Jim	R	house	41								\$100					\$100
Wilson	Bill	D	house	46			\$50										\$50
Witt	John E	R	house	89										\$100			\$100
Wolery	Merlin	R	house	90										\$100			\$100

Appendix 2A (continued): Tobacco Industry Campaign Contributions to 2002 Montana House of Representative Candidates

LAST	FIRST	PTY	LEG. DIST.	BW	LOR	PM	RJR	STC	TI	UST	JEROME ANDERSON	LEO BERRY	MARK BAKER	MARK STAPLES	MTA	HOSP. PAC	TOTAL TOB. CONTRIBUTIONS
Haines	Dick	R	house	63									\$200			\$100	\$300
Holden	Linda L	R	house	86			\$50						\$100	\$75			\$225
Lewis	Dave	R	house	55							\$100		\$50	\$100			\$250
McKenney	Joe	R	house	49									\$100	\$100			\$200
Ripley	Rick	R	house	50									\$100	\$100			\$200
Younkin	Cindy	R	house	28							\$100		\$100	\$75			\$275

Appendix 2B: Tobacco Industry Campaign Contributions to 2002 Montana Senate Candidates

LAST	FIRST	PTY	LEG. DIST.	BW	LOR	PM	RJR	STC	TI	UST	JEROME ANDERSON	LEO BERRY	MARK BAKER	MARK STAPLES	MTA	HOSP. PAC	TOTAL TOB. CONTRIBUTIONS
Bales	Walter	R	senate	1			\$50							\$50		\$50	\$150
Barkus	Gregory D	R	senate	39			\$50						\$100	\$100		\$100	\$350
Black	Jerry W	R	senate	44										\$100		\$100	\$200
Curtiss	Aubyn	R	senate	41			\$50										\$50
Gebhardt	Kelly	R	senate	4												\$75	\$75
Laible	Rick	R	senate	30										\$75		\$75	\$150
Mangan	Fjeff	D	senate	23			\$50										\$50
McGee	Dan	R	senate	11										\$75			\$75
Roush	Glenn A	D	senate	43										\$100		\$100	\$200
Schmidt	Trudi	D	senate	21										\$75			\$75
Simon	Bruce T	R	senate	9									\$100				\$100
Squires	Carolyn	D	senate	34			\$50									\$50	\$100
Tester	Jon	D	senate	45							\$100			\$100			\$200
Toropila	Joseph	D	senate	24										\$100			\$100
Wells	Jack	R	senate	14			\$50									\$100	\$150
<b>2002 TOTALS (HOUSE AND SENATE):</b>					\$0	\$0	\$0	\$700	\$0	\$0	\$0	\$300	\$0	\$1,750	\$2,925	\$1,425	\$7,100

Appendix 3A: Tobacco Industry Campaign Contributions to 2000 Montana House of Representative Candidates

LAST	FIRST	PTY	LEG.	DIST.	BW	LOR	PM	RJR	STC	TI	UST	JEROME ANDERSON	LEO BERRY	MARK BAKER	MARK STAPLES	HOSP MTA . PAC	CONTRIBUTIO NS
Bitney	Rodney	R	house	77			\$50	\$50							\$50		\$150
Clancy	Gilda	R	house	51										\$100			\$100
Davies	Bob	R	house	27				\$50									\$50
Devlin	Ronald R	R	house	3				\$50							\$50		\$100
Facey	Tom	D	house	67											\$50		\$50
Fisher	Stanley M	R	house	75				\$50									\$50
Forrester	Gary L	D	house	16											\$50		\$50
Fuchs	Daniel C	R	house	15				\$50									\$50
Gallus	Steve	D	house	35											\$50		\$50
Galvin-Halcro	Kathleen	D	house	48				\$50									\$50
Gillan	Kin	D	house	11											\$50		\$50
Golie	George	D	house	44				\$50							\$50		\$100
Haines	Dick	R	house	63				\$50							\$50		\$100
Hedges	Donald L	R	house	97				\$50							\$50		\$100
Hinesley	Morgan	R	house	30											\$50		\$50
Huntington	Gene	D	house	53									\$75		\$75		\$150
Jackson	Verdell	R	house	79				\$50									\$50
Jent	Larry	D	house	29											\$50		\$50
Kasten	Dave	R	house	99				\$50									\$50
Lewis	Dave	R	house	55				\$50				\$75			\$100		\$225
Lindeen	Monica J	D	house	7				\$50							\$50		\$100
Mangan	Jeff	D	house	45											\$50		\$50
McKenney	Joe	R	house	49				\$50									\$50
Mood	Doug	R	house	58				\$100							\$100		\$200
Noennig	Mark E	R	house	9				\$50									\$50
Noonan	Art	D	house	37											\$75		\$75
Olson	Alan	R	house	8				\$50									\$50
Reinicke	Sylvia (Bookout)	R	house	71				\$50							\$50		\$100
Ryan	Brennan	D	house	41				\$50									\$50
Schimdt	Trudi	D	house	42											\$50		\$50
Shanahan	Ward	R	house	54				\$100				\$100					\$200
Sliter	Paul	R	house	76			\$100	\$50									\$150
Smith	Frank J	D	house	98				\$50							\$50		\$100
Somerville	Roger	R	house	78											\$50		\$50
Story	Robert R Jr	R	house	24							\$100						\$100
Taylor	Lila	R	house	5				\$50									\$50
Tramelli	Brett	D	house	46											\$100		\$100
Tropila	Joseph (Joe)	D	house	47				\$50							\$100		\$150
Walters	Allan	R	house	60				\$50							\$50		\$100
Whitmer	Boone A	D	house	99											\$50		\$50
Witt	John E	R	house	89											\$50		\$50

Appendix 3B: Tobacco Industry Campaign Contributions to 2000 Montana Senate Candidates

LAST	FIRST	PTY	LEG.	DIST.	BW	LOR	PM	RJR	STC	TI	UST	JEROME ANDERSON	LEO BERRY	MARK BAKER	MARK STAPLES	MTA . PAC	HOSP CONTRIBUTIO NS	
Cocchiarella	Vicki	D	senate	32								\$100					\$150	
Glaser	William E (Bill)	R	senate	8				\$50									\$200	
Grinde	Larry	R	senate	47				100.00				100.00		100.00	100.00		400.00	
Harrington	Dan	D	senate	19				50.00				100.00					200.00	
Hibbard	Chase	R	senate	27				50.00				100.00	75.00		50.00		275.00	
Jabs	Reiny	R	senate	3				50.00									50.00	
Johnson	Royal C	R	senate	5				50.00									50.00	
Kitzenberg	Sam	R	senate	48											50.00		50.00	
McCarthy	Bea	D	senate	29			75.00	50.00									125.00	
McNutt	Walter	R	senate	50				50.00							50.00		100.00	
Shea	Jebbie (Bowman)	D	senate	18			75.00	50.00							50.00		175.00	
Sprague	Mike	R	senate	6				50.00				100.00			50.00		200.00	
Thomas	Fred	R	senate	31							0.00	100.00			50.00		150.00	
Zook	Tom	R	senate	2				50.00									50.00	
<b>2000 TOTALS (HOUSE AND SENATE):</b>						0.00	0.00	250.00	1,900.00	0.00	0.00	100.00	775.00	150.00	200.00	2,150.00		5,525.00

Appendix 4A: Tobacco Industry Campaign Contributions to 1998 Montana House of Representative Candidates

LAST	FIRST	PTY	LEG.	DIST.	BW	LOR	PM	RJR	STC	TI	UST	JEROME ANDERSON	LEO BERRY	MARK BAKER	MARK STAPLES	MTA	HOSP. PAC	TOTAL TOB. CONT'S
Bankhead	Paul	R	house	72				\$100										\$100
Beaudry	Haley	R	house	35				\$100										\$100
Bennett	Jim	D	house	20				\$100										\$100
Bersagel	Ernest	R	house	95				\$100										\$100
Bookout-Reinicke	Sylvia	R	house	71				\$100										\$100
Clark	Robert	R	house	8											\$50			\$50
Forrester	Gary	D	house	16				\$100										\$100
Gibson	Carol	D	house	20											\$50			\$50
Gillan	Kim	D	house	11											\$50			\$50
Grady	Edward J	R	house	55								\$100						\$100
Grinde	Larry Hal	R	house	94				\$100										\$100
Hanson	Marian W	R	house	1				\$100										\$100
Harrington	Dan W	D	house	38				\$100										\$100
Johnson	John	D	house	2				\$50										\$50
Johnson	Royal C	R	house	10				\$50										\$50
Kasten	Betty Lou	R	house	99				\$100										\$100
Menahan	William (Red)	D	house	57				\$100										\$100
Molnar	Brad	R	house	22				\$50										\$50
Ohs	Karl	R	house	33				\$100										\$100
Orr	Scott J	R	house	82											\$50			\$50
Pavlovich	Robert J	D	house	37				\$100										\$100
Shockley	Jim	R	house	61											\$35			\$35
Simon	Bruce T	R	house	18								\$100						\$100
Simpson	Dorothy C	D	house	61											\$50			\$50
Taylor	Lila V	R	house	5				\$100										\$100
Tropila	Joe	D	house	47				\$100										\$100
Tuss	Carley	D	house	46				\$100										\$100
Wagner	Douglas T	R	house	83				\$100										\$100
Wyatt	Diana E	D	house	43				\$100										\$100
Zook	Tom	R	house	3				\$100										\$100

Appendix 4B: Tobacco Industry Campaign Contributions to 1998 Montana Senate Candidates

LAST	FIRST	PTY	LEG.DIST.	BW	LOR	PM	RJR	STC	TI	UST	JEROME ANDERSON	LEO BERRY	MARK BAKER	MARK STAPLES	MTA	HOSP. PAC	TOTAL TOB. CONT'S
Beck	Tom	R	senate	28			\$100				\$50						\$150
Bishop	Al	R	senate	9			\$100										\$100
Christiaens	B F (Chris)	D	senate	23			\$50										\$50
Coccharella	Vicki	D	senate	32							\$100						\$100
Cole	Mack	R	senate	4			\$100						\$50				\$150
Crismore	William S	R	senate	41			\$100										\$100
DeBruycker	Roger	R	senate	45			\$50						\$50				\$100
Estrada	Sharon	R	senate	7							\$100						\$100
Grosfield	Lorents	R	senate	13			\$100										\$100
Holden	Ric	R	senate	1			\$100										\$100
Jergeson	Greg	D	senate	46			\$50										\$50
Keenan	Bob	R	senate	38			\$100										\$100
Miller	Ken	R	senate	11			\$100										\$100
Roush	Glenn A	D	senate	43			\$50										\$50
Wells	Jack J	R	senate	14			\$100										\$100
<b>1998 TOTALS (HOUSE AND SENATE):</b>					\$0	\$0	\$0	\$3,150	\$0	\$0	\$0	\$450	\$0	\$0	\$385		\$3,985

**Appendix 5: Tobacco Industry Campaign Contributions to 1996 Montana House of Representative and Senate Candidates**

LAST	FIRST	PTY	LEG.	DIST.	BW	LOR	PM	RJR	STC	TI	UST	JEROME ANDERSON	LEO BERRY	MARK BAKER	MARK STAPLES	MTA	HOSP. PAC	TOTAL TOB. CONTRIBUTIONS
Ahner	Chris	R	house	\$51								\$50		\$100				\$150
Grady	Edward J (Ed)	R	house	\$55								\$50						\$50
Larson	Don	D	house	\$58								\$50			\$100			\$150
Pavlovich	Robert J (Bob)	D	house	\$37						\$100								\$100
Schwinden	Dore	D	house	\$98											\$100			\$100
Soft	Loren L	R	house	\$12						\$100								\$100
Crippen	Bruce	R	senate	\$10								\$50						\$50
Harp	John G	R	senate	\$42											\$50			\$50
Mesaros	Ken	R	senate	\$25								\$50		\$100	\$100			\$250
Stang	Barry (Spook)	D	senate	\$36						\$100								\$100
<b>1996 TOTALS (HOUSE AND SENATE):</b>					\$0	\$0	\$0	\$0	\$0	\$0	\$300	\$250	\$0	\$200	\$350			\$1,100

**Appendix 6: Tobacco Industry Campaign Contributions to 1994 Montana House of Representative and Senate Candidates**

LAST	FIRST	PTY	LEG.	DIST.	BW	LOR	PM	RJR	STC	TI	UST	JEROME ANDERSON	LEO BERRY	MARK BAKER	MARK STAPLES	MTA	HOSP. PAC	TOTAL TOB. CONTRIBUTIONS
Anderson	Shiell W	R	house	25								\$50						\$50
Bohlinger	John	R	house	14								\$50						\$50
Bradley	Stephen E	D	house	18								\$50						\$50
Driscoll	Jerry	D	house	17				\$75				\$75						\$150
Feland	Gary	R	house	88				\$50										\$50
Grinde	Larry Hal	R	house	94				\$50										\$50
Harrington	Dan W	D	house	38				\$50										\$50
Menahan	William (Red)	D	house	57				\$50										\$50
Pavlovich	Robert (Bob)	R	house	37				\$75										\$75
Quilici	Joe	D	house	36				\$50				\$50						\$100
Visscher	Bob	R	house	26								\$50						\$50
Williams	Gerald D	R	house	60				\$50										\$50
Beck	Tom	R	senate	28				\$50				\$50						\$100
Benedict	Steve	R	senate	30				\$50				\$50						\$100
Cole	Mack	R	senate	4								\$50						\$50
Foster	Mike	R	senate	20								\$50						\$50
Gage	Delwyn	R	senate	43								\$50						\$50
Jasmin	Ed	R	senate	38								\$50						\$50
Miller	Ken	R	senate	11								\$50						\$50
<b>1994 TOTALS (HOUSE AND SENATE)</b>					\$0	\$0	\$550	\$0	\$0	\$0	\$0	\$675	\$0	\$0	\$0			\$1,225



**Appendix 7: Tobacco Industry Campaign Contributions to 1992 Montana House of Representative and Senate Candidates**

LAST	FIRST	PTY	LEG.	DIST.	BW	LOR	PM	RJR	STC	TI	UST	JEROME ANDERSON	LEO BERRY	MARK BAKER	MARK STAPLES	HOSP. MTA	PAC	TOTAL TOB. CONT'S	
Driscoll	Jerry	D	house	92								\$50						\$50	
Hibbard	Chase T.	R	house	46								\$50						\$50	
Larson	Donald E.	D	house	65								\$50						\$50	
Messmore	Charlotte	R	house	38								\$50						\$50	
Rice	Jim	R	house	43								\$50						\$50	
Skelton	Rosana	R	house	44								\$50						\$50	
Crippen	Bruce	R	senate	45								\$50						\$50	
Keating	Thomas F.	R	senate	44								\$50						\$50	
Might	Leo Michael	R	house	57										\$75				\$75	
Pipinich	Bob	D	senate	33											\$50			\$50	
Thayer	Gene	R	senate	19								\$50						\$50	
<b>1992 TOTALS (HOUSE AND SENATE):</b>							\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$450
													\$0	\$75	\$50	\$575			

**Appendix 8: Tobacco Industry Campaign Contributions to 1990 Montana House of Representative and Senate Candidates**

LAST	FIRST	PTY	LEG.	DIST.	BW	LOR	PM	RJR	STC	TI	UST	JEROME ANDERSON	LEO BERRY	MARK BAKER	MARK STAPLES	HOSP. MTA	PAC	TOTAL TOB. CONTRIBUTION S
Brown	Dave	D	house	72								\$200						\$200
Campbell	Bud	R	house	48			\$50											\$50
Driscoll	Jerry	D	house	92			\$50											\$50
Gould	R. Budd	R	house	61			\$100											\$100
Grinde	Larry Hal	R	house	30			\$100											\$100
Klare	Morris	D	house	80								\$50						\$50
Bishop	Al	R	senate	46									\$50					\$50
Blaylock	Chet	D	senate	43									\$50					\$50
Lynch	John "J.D."	D	senate	34								\$75						\$75
Norman	Bill	D	senate	28								\$75						\$75
Waterman	Mignon	D	senate	22								\$100	\$50					\$150
<b>1990 TOTALS (HOUSE AND SENATE):</b>							\$300					\$500	\$150					\$950

Appendix 9: Summary of Tobacco Industry Contributions to Montana Constitutional Officer Candidates 1992-2000

2000 Constitutional Officer Candidate Contributions

OFFICE	LAST	FIRST	PTY	BW	LOR	PM	RJR	STC	TI	UST	JEROME ANDERSON	LEO BERRY	MARK BAKER	MARK STAPLES	MTA	HOSP.	PAC	TOTAL TOB. CONT
Atty.Gen	Rice	Jim	R			\$100						\$100						\$200
Atty.Gen	McGrath	Mike	D								\$100	\$175		\$300				\$575
Auditor	Morrison	John M.	D											\$200				\$200
Auditor	Simon	Bruce T.	R								\$200							\$200
Auditor	Stang	Barry	D								\$200	\$175	\$200					\$575
Gov.	Cooney	Mike	D									\$200		\$200				\$400
Gov.	Mazurek	Joseph P.	D								\$200	\$350		\$400				\$950
Gov.	O'Keefe	Mark	D									\$400		\$600				\$1,000
Gov.	Martz	Judy H.	R			\$150	\$400				\$300	\$200	\$800					\$1,850
Pub.Serv.Comm.	Fisher	Dave A.	D								\$100							\$100
Sec.State	Brown	Robert J	RF			\$100					\$200	\$100	\$200					\$600
Suprm Ct.	Renz	Jeffrey T.	NP											\$100				\$100
Suprm.Ct.(Chf.Jst.)	Gray	Karla	NP								\$200	\$200	\$200	\$200				\$800
<b>2000 TOTALS:</b>					\$0	\$0	\$250	\$400	\$0	\$0	\$0	\$1,100	\$1,600	\$1,000	\$1,700	\$0	\$0	\$6,050

1996 Constitutional Officer Candidates

OFFICE	LAST	FIRST	PTY	BW	LOR	PM	RJR	STC	TI	UST	JEROME ANDERSON	LEO BERRY	MARK BAKER	MARK STAPLES	MTA	HOSP.	PAC	TOTAL TOB. CONT	
Atty. Gen	Mazurek	Joseph P.	D								\$200							\$200	
Gov.	Jacobson	Judy	D									\$200						\$200	
Gov.	Racicot	Marc	R									\$400						\$400	
				\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$200	\$600	\$0	\$0	\$0	\$0	\$0	\$800	
<b>1996 TOTALS</b>				\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$200	\$600	\$0	\$0	\$0	\$0	\$0	\$0	\$800

1992 Constitutional Officer Candidate Contributions

OFFICE	LAST	FIRST	PTY	BW	LOR	PM	RJR	STC	TI	UST	JEROME ANDERSON	LEO BERRY	MARK BAKER	MARK STAPLES	MTA	HOSP.	PAC	TOTAL TOB. CONT
Atty.Gen	Mazurek	Joseph P.	D									\$500						\$500
Gov.	McGrath	Mike	D											\$270				\$270
Gov.	Racicot	Marc	R								\$437							\$437
Gov.	Stephens	Stan	R								\$1,125							\$1,125
Gov.	Bradley	Dorothy	D								\$60	\$1,105						\$1,165
Pub.Serv.Comm.	Campbell	Barbara	R								\$100							\$100
Pub.Serv.Comm.	Macy	Ted	R										\$100					\$100
Pub.Serv.Comm.	Mercer	Wallace W.	R								\$150							\$150
Sup.Ct (Ass.Jst)	Gray	Karla M.	NP								\$50	\$100						\$150
Sup.Ct (Chf.Jst.)	Turnage	Jean A.	NP								\$150							\$150
<b>1992 TOTAL</b>				\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$2,072	\$1,705	\$100	\$270				\$4,147

Appendix 10: Tobacco Industry and Ally Group Lobbying Expenditures 1993-2002

<b>Principal Lobbyists</b>	<b>2003</b>	<b>2002</b>	<b>2001</b>	<b>2000</b>	<b>1999</b>	<b>1998</b>	<b>1997</b>	<b>1996</b>	<b>1995</b>	<b>1994</b>	<b>1993</b>	<b>TOTAL</b>
Anderson & Baker	\$8,250											\$8,250
Mark Staples Law Firm	\$10,050		\$5,000									\$15,050
Montana Tavern Association	\$38,324	\$7,646	\$3,138		\$6,198	\$1,000	\$41,026		\$3,696			\$101,027
Miller Brewing Co.	\$23,353		\$2,300									\$25,653
Philip Morris	\$3,334	\$10,483	\$5,699		\$120		\$17,665		\$3,000		\$1,000	\$41,300
RJ Reynolds	\$52,683	\$6,510										\$59,193
UST	\$4,654	\$5,230	\$8,319		\$200							\$18,403
<b>TOTAL</b>	<b>\$140,648</b>	<b>\$29,869</b>	<b>\$24,455</b>	<b>\$0</b>	<b>\$6,517</b>	<b>\$1,000</b>	<b>\$58,691</b>	<b>\$0</b>	<b>\$6,696</b>	<b>\$0</b>	<b>\$1,000</b>	<b>\$268,876</b>

Appendix 11: Tobacco Industry Contributions to Political Party Committees 1994-2002

<b>2002 POLITICAL PARTY COMMITTEES</b>											
	<b>B/W</b>	<b>LOR</b>	<b>PM</b>	<b>RJR</b>	<b>STC</b>	<b>TI</b>	<b>UST</b>	<b>Jerome Anderson</b>	<b>Mark Staples</b>	<b>MTA</b>	<b>TOTAL</b>
Montana Democratic Party			\$300	\$800			\$400	\$200	\$250	\$1,950	\$1,950
Montana Republican State Central Committee				\$250			\$500	\$460		\$1,210	\$1,210
<b>2002 TOTAL</b>	\$0	\$0	\$300	\$1,050	\$0	\$0	\$900	\$660	\$250	\$3,160	\$3,160

<b>2000 POLITICAL PARTY COMMITTEE</b>											
	<b>B/W</b>	<b>LOR</b>	<b>PM</b>	<b>RJR</b>	<b>STC</b>	<b>TI</b>	<b>UST</b>	<b>Jerome Anderson</b>	<b>Mark Staples</b>	<b>MTA</b>	<b>TOTAL</b>
Montana Democratic Party			\$300					\$525			\$825
<b>2000 TOTAL</b>	\$0	\$0	\$300	\$0	\$0	\$0	\$0	\$525	\$0	\$0	\$825

<b>1998 POLITICAL PARTY COMMITTEE</b>											
	<b>B/W</b>	<b>LOR</b>	<b>PM</b>	<b>RJR</b>	<b>STC</b>	<b>TI</b>	<b>UST</b>	<b>Jerome Anderson</b>	<b>Mark Staples</b>	<b>MTA</b>	<b>TOTAL</b>
Montana Democratic Party				\$800				\$580	\$300		\$1,380
Montana State Republican Central Committee			\$500				\$1,000	\$150			\$1,650
<b>1998 TOTAL</b>	\$0	\$0	\$500	\$800	\$0	\$0	\$1,000	\$730	\$300	\$0	\$3,030

<b>1996 POLITICAL PARTY COMMITTEE</b>											
	<b>B/W</b>	<b>LOR</b>	<b>PM</b>	<b>RJR</b>	<b>STC</b>	<b>TI</b>	<b>UST</b>	<b>Jerome Anderson</b>	<b>Mark Staples</b>	<b>MTA</b>	<b>TOTAL</b>
Montana Democratic Party			\$300								\$300
Montana State Republican Central Committee				\$1,000				\$636			\$1,636
<b>1996 TOTAL</b>	\$0	\$0	\$300	\$1,000	\$0	\$0	\$0	\$636	\$0	\$0	\$1,936

<b>1994 POLITICAL PARTY COMMITTEE</b>											
	<b>B/W</b>	<b>LOR</b>	<b>PM</b>	<b>RJR</b>	<b>STC</b>	<b>TI</b>	<b>UST</b>	<b>Jerome Anderson</b>	<b>Mark Staples</b>	<b>MTA</b>	<b>TOTAL</b>
Montana Democratic Party								\$100	\$250		\$350
Montana State Republican Central Committee								\$270	\$75		\$345
<b>1994 TOTAL</b>	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$370	\$325	\$0	\$695

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Appendix 12: Center for Disease Control's (CDC) Best Practices for Comprehensive Tobacco Control Programs - August 1999.

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**Montana Recommended Program Element Budget (per year)**

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I. Community Programs to Reduce Tobacco Use

Upper Estimate: \$2,958,000  
Lower Estimate: \$1,466,000

II. Chronic Disease Programs to Reduce the Burden of Tobacco-Related Diseases

Upper Estimate: \$4,166,000  
Lower Estimate: \$2,791,000

III. School Programs

Upper Estimate: \$1,802,000  
Lower Estimate: \$1,201,000

IV. Enforcement

Upper Estimate: \$879,000  
Lower Estimate: \$529,000

V. Statewide Programs

Upper Estimate: \$879,000  
Lower Estimate: \$352,000

VI Counter-Marketing

Upper Estimate: \$2,637,000  
Lower Estimate: \$879,000

VII. Cessation Programs

Upper Estimate: \$3,661,000  
Lower Estimate: \$916,000

VIII. Surveillance and Evaluation

Upper Estimate: \$1,712,000  
Lower Estimate: \$814,000

IX Administration and Management

Upper Estimate: \$856,000  
Lower Estimate: \$407,000

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Total Program Annual Cost

Upper Estimate: \$19,679,000  
Lower Estimate: \$9,355,000

Per Capita Funding Ranges

Upper Estimate: \$22.39  
Lower Estimate: \$10.65

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