

MINUTES OF THE JUDICIARY COMMITTEE
January 12, 1983

The meeting of the House Judiciary Committee was called to order by Chairman Dave Brown at 8:00 a.m. in Room 224A of the Capitol. All members except Rep. Iverson, who was excused, were present. Brenda Desmond, Legislative Council, was present.

DAVID NISS, Legislative Council was asked to explain rule-making authority to the committee. NISS stated that rule making in Montana is governed by a procedure by the Montana Administrative Procedure Act, or MAPA. MAPA contains the procedure to be followed when an administrative agency adopts rules. In 1975 a computer search was conducted of Montana Code. Three hundred and fifty statutes referring to rule making authority were located in the search. Today there are probably 400-500 references of this nature. MAPA governs the manner in which rules must be adopted when a statute has authorized adoption of rules. Ordinarily, the agency is not required to hold a hearing prior to the adoption of a rule. If a hearing is held, however, the state agency must take into consideration, the testimony given at the hearing. A notice of adoption must be published. The Montana Administrative Register, MAR, contains all of the notices of proposed and adopted administrative rules. After the rules are adopted, the agency must transfer the adopted rules to the Administrative Rules of Montana, ARM. The ARM is the permanent volume which lists each agency and rules that have been adopted by the agency. The work of the Administrative Code Committee is purely advisory. The committee reviews rules in the register and recommends changes if it believes changes are needed. The committee does not have authority to order the agency to suspend or change proposed rules. The committee does have a few limited statutory powers. In July of 1981 the committee voted to send copies of proposed rules to the sponsors of bills. Since that time approximately 60 copies have been sent on various bills.

REP. SEIFERT asked what recourse the legislature has to change rule making authority. NISS replied the procedure has changed in the last year. Prior to that time the legislature had the authority by joint resolution to either amend a rule directly or require an agency to amend an adopted rule. Judge Bennett has since ruled this legislative action unconstitutional. Now a rule may only be amended through a bill signed by the governor. The Administrative Code Committee's authority is limited.

HOUSE BILL 97

REP. MANUEL, sponsor, stated this bill will change the penalty imposed on youths for unlawful possession of

intoxicating substances and for motor vehicle violations. It would also provide that youths and their parents may be subject to contempt of court if the youth fails to comply with the penalty given.

STEVE NELSON, Board of Crime Control, was in favor of the bill. A number of juvenile offenders are referred to his office the first or second time they are arrested. The third time the offender is placed in jail. Recently a Justice of the Peace in Choteau sentenced a youth to ten days in jail. The county sheriff felt, however, he could not place the offender in the jail because the jail was not in compliance with federal and state standards on juvenile incarceration. The sheriff was concerned about the potential liability of the county. The Justice of the Peace agreed there is a conflict between the Youth Court Act and the criminal statutes applying to youths. This bill would make it easier for the sheriffs to handle this type of offender. If the juvenile fails to comply with the penalty imposed, he can be held in contempt of court. There is some confusion concerning whether JP courts can sentence a youth to jail. This bill will clarify the question.

GLEN HUFSTEAD, Probation Officer from Flathead County, was in support of the bill. Several years ago in his county, 13 youths were killed in alcohol-related car accidents in one year. As a result of these deaths, in 1979, local officials began an enforcement program. The program includes increased patrolling by law enforcement officers, education on alcohol abuse and community work programs. In 1980 six youths were killed in connection with drinking and driving; in 1981 four, and in 1982, none. HUFSTEAD felt the program is working well.

On the first offense, the youth is placed in a work program. He does not have to go to court and no record is made. When he has completed the sentence the charges are dismissed. The youth must complete 24 hours of public work, such as cleaning up the highways. The work is performed with a supervisor watching. Over 9,000 hours were worked last year. The youths do not receive reimbursement for the work. For the second offense, the youth must work another 24 hours, complete a substance abuse education program, and pay \$50 to attend the program. It is felt that a youth who is arrested a third time has a drinking problem. Therefore, third offenders must receive in-patient treatment. This costs \$5,000-6,000 and the parents must pay.

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HUFSTEAD further stated that when a youth is to be jailed the chief probation officer visits with the youth to make sure he is emotionally capable of being incarcerated. There is close supervision of any youth placed in jail. In closing, HUFSTEAD stated he was in favor of the bill as long as it would not hinder his program.

DUANE TOOLEY, Department of Justice, was in favor of the bill. He offered an amendment requiring the court to report to the Division of Motor Vehicles when a suspension or revocation of a driver's license is ordered. At present the Department is often unaware that a license has been suspended or revoked under this statute. If the Department were notified the offense would be placed on the driver's record with the Department. The department could then ensure that a driver could not obtain a duplicate license in another county. EXHIBIT A.

MIKE MURRAY, Department of Institutions, supported the bill. Offenders should attend a rehabilitation school, but the bill does not state who will be responsible for the cost of the program. Also there is the problem of what to do with repeat offenders. Some juveniles attend the programs so many times that they could literally teach the program.

There were no further proponents.

MARCEL TURCOTTE, Montana Magistrates Association, stated some Justices of the Peace do not support the bill. Some counties do not have the jail facilities to incarcerate youths.

In closing, MANUEL stated there is a need to change the law concerning juveniles.

REP. J. BROWN asked if all areas have alcohol abuse education programs for juvenile offenders. MURRAY replied that all areas including rural areas have the Montana Court School Program. Urban areas have the Minors Substance Abuse Program. HUFSTEAD stated in his county this type of offense is rarely sent to the JP Court. All JPs work closely. The offender is placed under his program and if placed in jail, his program accepts the full responsibility for the youth. There is a high risk in placing someone who is intoxicated in jail because of the high incidence of suicide attempts in the group. TURCOTTE stated in some areas there are not separate buildings in which youth offenders may be placed. However, state law requires separation of youthful and adult offenders in a jail.

REP. RAMIREZ noted there was a problem in the bill concerning the youth who is over 18 and under 19 years of age.

REP. EUDAILY questioned the suspension of the driver's license. What if a youth is picked up for being drunk yet was not driving? REP. MANUEL replied that would be a different situation in which probably a \$50.00 fine would be charged.

REP. CURTISS wondered if it was fair to hold the parent in contempt of court when it is the youth who has failed to pay a fine. TURCOTTE stated unless there is complete cooperation of the parent, problems will occur. Many parents do not care what their child does.

REP. J. BROWN asked how the bill might affect HUFSTEAD's program. He replied the original bill would not affect the program. CURT CHISHOLM, Department of Institutions, stated the bill as written is silent on who is responsible for payment for alcohol treatment. He stated that his office would bring in language to the committee about the payment for an offender's attendance of Alcohol Treatment Programs. The hearing on the bill was closed.

HOUSE BILL 27

REP. KOEHNKE, sponsor, stated this bill would amend Montana's Codification of the Uniform Commercial Code to provide that there are no implied warranties that certified agricultural seed is disease free. In the 1979 session, REP. ELLERD sponsored a bill that stated that in the sale of livestock there are no implied warranties that the livestock are free from sickness or disease. It was realized it is hard to guarantee that the livestock would not be ill or free from disease. That bill passed. This bill is similar to the Livestock Bill. It states that in the sale of certified agricultural seed, there is no implied warranty that it is disease free. Without this type of law, the farmer is subject to many lawsuits.

JOHN SULLIVAN was in favor of the bill. He has had experience as an attorney representing the state in livestock cases. In 1977, there were several incidents of diseased seed potatoes. The liability faced by the grower of the seed potatoes was huge. One pound of seed potatoes can produce 20 pounds of seed. A diseased or slightly infected potato, therefore, can produce a large number of seeds, which would also be diseased.

The bill would eliminate implied warranties in the sale of certified agricultural seed. Insurance on seed quality is not usually purchased by the farmer because of the great expense of the insurance.

A disease in seed potatoes may be difficult to detect. When the seed potato farmer harvests the seed potatoes, he feels he has a good crop to sell. However, if bacteria grows in the potatoes or if the buyer does not properly care for the seeds, the crop may be diseased. Ringrot, a bacterial disease, can go through seven generations of seed potatoes before it actually comes out and this is very difficult to prevent.

The UCC contains provisions that allows the disclaimer of an implied warranty if the disclaimer is set forth in the contract in proper form and in large enough type. An attorney often has a hard time trying to make that disclaimer hold up in court. The federal law, The Magnuson Moss Warranty Act, exempts from its provisions concerning implied warranties from the sale of seeds. Montana will be a test state if this bill is passed.

Disclaimers of warranties is the custom in all of the seed industry. Stores that sell seed will only give the buyer the amount of money the seed actually cost if such seed is proven defective.

SULLIVAN further stated there is a potential liability problem for the state. An attorney could argue that the state certification program is liable if the grower's liability is removed. Amendments were given to the committee concerning this aspect of the bill. EXHIBIT B. STEVE BROWN, was also a proponent of the bill. He has been involved in seven cases concerning seed potato farmers.

BROWN stated that the growers have borrowed against the future of a crop. Financial problems arose for his clients when their crops were diseased and could not be used for seed. Growers are now more cautious.

He warned the committee to consider what would happen to the Montana farmer if this was the only state that passed the law. People from other states could file suit. Most of his lawsuits were filed from farmers from the state of Washington. This puts the Montana farmer at a disadvantage. The bill should reflect that it is only in effect if the other state has the same law.

There were no other proponents.

There were no opponents.

In closing, REP. KOEHNKE stated that things have changed since he first began growing seed potatoes. He can still sell his seed potatoes if they are diseased, but only to the commercial market at a much lower rate. If lawsuits or the threat of lawsuits continue, it will place the seed potato farmer in a position that he will no longer raise the crop.

REP. SEIFERT asked if the bill were passed would it pass liability to the state. SULLIVAN felt it would not, except as construed by an attorney. REP. SEIFERT further asked if the bill passed would it affect the sale price of the crop. It was replied no. Most seed potato farmers are now using a contract for the sale of their crops which disclaims all implied warranties. EXHIBIT C.

REP. KEYSER asked if there has been an increase in lawsuits in the last ten years. It was replied yes. Eighty percent of the potatoes grown in Montana are grown for sale as seed.

REP. KEYSER asked about the Seed Growers Association. REP. KOEHNKE replied he has been a member of the association. He stated that in order to have a seed potato crop certified, there are three or four inspections of the crop while it is in the field. There are also inspections of the storage bins, trucks they are shipped in, etc. There are sanitation rules the growers must follow also. If standards are not met, the crop is not certified and must be sold on the commercial market.

SULLIVAN stated that the diseases most common to seed potatoes are viral and bacterial. If there is a problem with hard seeds, like wheat it is generally genetic. REP. RAMIREZ asked about the detectability of diseases in other seeds. MIKE KOEHNKE stated that is often a problem detecting when or if a crop has a disease. He stated the Grain Growers want to be included in the bill.

It was further stated that the insurance policy covering seed potatoes is very high and few farmers can afford it.

The hearing on the bill ended.

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HOUSE BILL 44

REP. HARPER, sponsor, stated this bill's purpose is to give a supplier of dated goods that are rotated in inventory on a regular basis an interest in the goods higher in priority than the creditors of the buyer. The bill results from a situation that occurred in Helena. A business recently went bankrupt; therefore, the magazine supplier was unable to obtain his merchandise from the business and sell for the benefit of the business. When the supplier was finally able to obtain his merchandise, the publications were outdated and of no value. This bill would allow suppliers to obtain their merchandise the same day the business closes.

JOHN HOLLOW, Helena News, Inc., was a proponent of the bill. Section 30-2-326 UCC applies to transactions of creditors of a business that closes down. Certain unsecured creditors can come before the secured customer. If a loan is made to a business, the Small Business Administration (SBA) guarantees the loan and files a security agreement. The bank also files a security agreement. The secured interests usually relate to all acquired property after the loan is made.

Some businessmen, however, provide a dated good, such as the Helena News, Inc. does. For this company and others like it to fill out a security agreement each week they deliver merchandise to local stores is not practical. This bill would give businesses that deliver dated goods a priority that is higher than that held by a financing agency that has loaned money previously to the business.

HOLLOW further stated that sale-on-approval items are like a typewriter that the seller can obtain and resell. Magazines, however, are dated items. Once the date has passed, the magazines are worthless.

MARGARET HOLLOW, Helena News, Inc. was also in favor of the bill. She stated magazines spoil in the sense that once they are outdated, no one wants to read them. Her company delivers publications on Mondays and Wednesdays to 42 Helena stores. On Tuesdays they deliver paperbacks. Thursdays they pick up all the returns. Fridays the extra magazines are shipped back to the companies that send the magazines in the first place. HOLLOW stated the Helena News, Inc. bills the stores on a weekly basis.

M. HOLLOW said when a new business starts in town and wants their services, they anticipate what her company will charge them on a weekly basis based on the amount of magazines purchased. If that company gets behind in their payment, the news service continues to deliver magazines because they do not want to help the new business to into bankruptcy. Last year, however, two businesses did go bankrupt. The news service was not allowed to go into the store and obtain their merchandise. The average life of a paperback is 24 days. Credit cannot be given for an outdated publication.

There were no further proponents.

There were no opponents.

REP. HARPER closed the bill.

REP. ADDY asked what type of sale on return items are rotated on a 60 day basis. JOHN HOLLOW stated most items are dated but not rotated every 60 days. Film and drugs are dated as well as food products. They are rotated by the expiration date.

There were no further questions.

The committee went into Executive Session.

EXECUTIVE SESSION

HOUSE BILL 44

REP. JENSEN moved DO PASS. It was seconded by REP. J. BROWN.

REP. KEYSER wondered if this bill would effect grocery stores. REP. ADDY replied he felt everyone would benefit from the bill.

REP. RAMIREZ wondered about the UCC rule. He stated the bank cannot obtain a security interest in all the goods the store has. REP. ADDY stated it would seem the person would only have an interest if the merchandise that was made available them. What would a bank do with magazines?

REP. DARKO stated that some stores do not take an actual inventory of the goods a supplier provides. Sometimes the stores do not own the goods.

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REP. HANNAH stated that banks and the SBA are hesitant to loan money or credit unless they feel the borrower can repay the loan. The bill takes the responsibility from the market place and places it on the supplier. REP. JENSEN withdrew his motion of DO PASS when the committee felt they should wait to take final action on the bill.

HOUSE BILL 47

REP. CURTISS moved DO PASS, which was seconded by REP. HANNAH. REP. CURTISS felt there is much misunderstanding about rulemaking authority.

REP. ADDY offered an amendment to the bill. EXHIBIT D. REP. ADDY stated REP. STOBIE, co-sponsor of the bill had no objection to the amendment. BRENDA DESMOND stated if the amendment was adopted, the purpose of the bill would not be changed. REP. ADDY felt the amendment would help the bill. Some people feel that advisory rulemaking does not have the force of law, and therefore, they do not have to abide by the interpretation of the statute found in the advisory rule.

REP. CURTISS wondered if the bill interferes with the separation of powers. Would the new language invite the courts to come in and interpret the rule their own way? REP. BROWN stated that the amendment is not intended to hurt the bill.

REP. DAILY stated there are instances where agencies do not have rule making authority and they do establish rules that are for advisory purposes only. The general public might not realize that the rule is for advisory purposes only.

It was decided to hold the bill until the amendments that were proposed by REP. ADDY can be written in full.

HOUSE BILL 3

REP. JAN BROWN moved DO PASS. REP. KEYSER seconded the motion.

REP. SCHYE stated he felt most of the testimony given did not pertain to the bill but rather to the amendments suggested by Judge Keedy.

REP. JENSEN was against the motion. He questioned what rule would be repealed if the bill were to pass. REP. RAMIREZ stated there is a current rule that does have a limit on the number of judges one can use. Time limits would not be affected by the bill.

BRENDA DESMOND stated the Supreme Court has the power to adopt rules. The legislature can disapprove the rules but its recommendations do not bind the Supreme Court.

REP. HANNAH moved to amend the bill to include KEEDY's amendments as given in testimony. (See EXHIBITS from meeting of January 11). The amendments, in REP. HANNAH's opinion, would provide for the intent the sponsor intended. The system would still provide for the removal of a judge if serious bias existed.

REP. EUDAILY was opposed to the amendment. Judges are elected to enforce the law.

REP. CURTISS made a substitute motion to table the amendment. REP. KEYSER seconded the motion. No further discussion was allowed on the amendment. The motion to table the amendment passed with REP. HANNAH voting against the motion.

REP. DAILY stated he was against the bill. Judges are human beings and each judge has a different personality.

REP. CURTISS stated that urban citizens should think about what the rural people are faced with. Opponents of the bill spoke as if every right would be taken away except the preliminary challenge. If judges are so bad, cause should be shown.

REP. RAMIREZ was against the bill. He felt KEEDY was the best example of a person who takes with he strong attitudes that are not always consistent with objectivity and justice. This bill applies only to civil cases. People cannot always get a fair hearing in front of some judges.

REP. KEYSER felt that one substitution of a judge per party is adequate.


REP. FARRIS stated she opposed the bill.

REP. DAILY stated judges are very influential people in the communities and very few judges ever lose their bid for re-election.

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A roll call vote was taken on the motion DO PASS. The following representatives voted YES: J. BROWN, CURTISS, EUDAILY, HANNAH, KEYSER, and SEIFERT. The following representatives voted NO: D. BROWN, ADDY, BERGENE, DAILY, DARKO, FARRIS, JENSEN, KENNERLY, RAMIREZ, SCHYE, SPAETH, and VELEBER. The motion of DO PASS failed 12 to 6. The vote was reversed to a motion of DO NOT PASS, and left the committee as such.

The meeting of the Judiciary Committee adjourned at 11:40 a.m.



DAVE BROWN, Chairman



Maureen Richardson, Secretary

STANDING COMMITTEE REPORT

January 12, 19 83

MR. **SPEAKER:**

We, your committee on **JUDICIARY**

having had under consideration **HOUSE** Bill No. **3**

First reading copy (**White**)
Case:

A BILL FOR AN ACT ENTITLED: "AN ACT TO DISAPPROVE THAT PART OF THE SUPREME COURT RULE ON DISQUALIFICATION AND SUBSTITUTION OF JUDGES THAT ALLOWS EACH ADVERSE PARTY IN A CIVIL CASE TWO SUBSTITUTIONS OF A JUDGE."

Respectfully report as follows: That **HOUSE** Bill No. **3**

DO NOT PASS

~~XXXXXXXX~~

DAVE BROWN,

Chairman.

	Date: 1/12 No: HB 3 Do Pass	Date: No:	Date: No:	Date: No:	Date: No:	Date: No:
BROWN, Dave	No					
ADDY, Kelly	No					
BERGENE, Toni	No					
BROWN, Jan	Yes					
CURTISS, Aubyn	Yes					
DAILY, Fritz	No					
DARKO, Paula	No					
EUDAILY, Ralph	Yes					
FARRIS, Carol	No					
HANNAH, Tom	Yes					
IVERSON, Dennis	-					
JENSEN, James	No					
KENNERLY, Roland	No					
KEYSER, Kerry	Yes					
RAMIREZ, Jack	No					
SCHYE, Ted	No					
SEIFERT, Carl	Yes					
SPAETH, Gary	No					
VELEBER, Dennis	No					

CS-31

Exhibit A

HB 97

1/12/83

AMENDMENT

Amending House Bill 97 on page 2, line 2, by inserting, following the word "suspended", the words "as provided in section 61-12-601", and further amend House Bill 97 on page 3, following line 22, by adding a new subsection as follows:

"(4) Any suspension or revocation by the court shall be reported to the Division of Motor Vehicles and added by them to the driver's record."

Exhibit B
HB 27

1/12/83

AMENDMENTS TO HOUSE BILL 27

(Introduced Bill)

* * * * *

1. Title, Line 6:
Following: "WARRANTIES THAT"
Strike: "CERTIFIED AGRICULTURAL"
2. Title, Line 7:
Following: "SEED"
Insert: "FOR PLANTING"
3. Page 2, Lines 22-24:
Following: "sales of"
Strike: "either botanical or vegetative types of
certified agricultural seed that, has been
produced and certified pursuant to Title 80,
chapter 5, part 3,"
Insert: "any seed for planting (including both botani-
cal and vegetative types of seed, whether
certified or not),"

UNIVERSAL SEED POTATO CONTRACT FOR SALE

11/12/83

Form 8203

CONTRACT INCLUDES REVERSE SIDE HERETO

1. DATE OF ISSUE _____ 2. ORIGINAL ISSUER: _____ Seller
(Check one) _____ Buyer 3. CONTRACT NO. **132**

This is a legal CONTRACT FOR SALE for either a present or future sale in consideration of the mutual promises hereinafter, between the SELLER,

Seller's Business Name _____ Address _____ City _____ State _____ Zip _____ Telephone Number _____

hereinafter referred to as SELLER, who has the legal authority to sell or offer to sell the hereinafter described seed potatoes (either crops, farm products or goods) and agrees to sell according to all the terms and conditions of this agreement, WHICH SHALL BE NULL AND VOID UNLESS SIGNED BY BOTH PARTIES HERETO AND RETURNED TO THE ORIGINAL ISSUER WITHIN FIFTEEN (15) DAYS AFTER THE HEREBOVE CONTRACT DATE OF ISSUE (ITEM NO. 1), PROVIDED HOWEVER, NOTWITHSTANDING ITS ENFORCEMENT AND FULL EFFECT WITH RESPECT TO GOODS FOR WHICH ANY PAYMENT HAS BEEN MADE AND ACCEPTED, OR WHICH GOODS HAVE BEEN RECEIVED AND ACCEPTED, and the BUYER,

Buyer's Business Name _____ Address _____ City _____ State _____ Zip _____ Telephone Number _____

hereinafter referred to as BUYER, who hereby agrees to accept and pay for in-full for the hereinafter described seed potatoes (either crops, farm products or goods) according to all the terms and conditions of this agreement, including REVERSE SIDE HERETO, the FULL PAYMENT PROMPTLY CLAUSE, the LATE PAYMENT CLAUSE, the LIMITATION AND EXCLUSION OF CERTAIN WARRANTIES, the LIMITATION OF CONSEQUENTIAL DAMAGES AND REMEDIES, the MISCELLANEOUS CONDITIONS OF SALE, and all of the other provisions hereto as follows:

4. SEED STATE OF ORIGIN	5. POTATO VARIETY or NO.	6. FIELD/LOT IDENTIFICATION	7. SEED CLASS/GENERATION
8. TAG COLOR	9. STATE SEED GRADE	10. MINIMUM TUBER SIZE	11. MAXIMUM TUBER SIZE
12. TRADE TERMS OF SALE: (See P.A.C.A. Regulation Sec. 46.43.) SOLD AS:			13. _____ BAG SIZE _____ lbs. _____ BULK SHIPMENT
14. TYPE OF CARRIER:	15. QUANTITY of CWT <div style="text-align: right; font-size: 1.2em;">CWT</div>	16. F.O.B. UNIT PRICE per CWT <div style="text-align: right; font-size: 1.2em;">\$ /CWT</div>	17. TOTAL F.O.B. PURCHASE PRICE <div style="text-align: right; font-size: 1.2em;">\$</div>
18. TERMS OF DISCOUNT:		18(a). LESS DISCOUNT per CWT <div style="text-align: right; font-size: 1.2em;">\$ /CWT</div>	18(b). LESS TOTAL DISCOUNT <div style="text-align: right; font-size: 1.2em;">\$</div>
19. FREIGHT: Arrangements and Responsibilities:		19(a). FREIGHT COST per CWT <div style="text-align: right; font-size: 1.2em;">\$ /CWT</div>	19(b). TOTAL FREIGHT COST <div style="text-align: right; font-size: 1.2em;">\$</div>
		20(a). TOTAL COST per CWT <div style="text-align: right; font-size: 1.2em;">\$ /CWT</div>	20(b). TOTAL AMOUNT <div style="text-align: right; font-size: 1.2em;">\$</div>
21. The agreed DOWN PAYMENT SCHEDULE—		22. 1st Down Payment per CWT <div style="text-align: right; font-size: 1.2em;">\$ /CWT</div>	22(a). DATE DUE 1st Down <div style="text-align: right; font-size: 1.2em;">\$</div>
		22(b). 1st Down Payment Amount	
		23. 2nd Down Payment per CWT <div style="text-align: right; font-size: 1.2em;">\$ /CWT</div>	23(a). DATE DUE 2nd Down <div style="text-align: right; font-size: 1.2em;">\$</div>
		23(b). 2nd Down Payment Amount	
24. BALANCE DUE — FULL PAYMENT PROMPTLY — <small>Full payment is due within TEN (10) DAYS after the day on which the said seed potatoes are accepted at delivery by the receiver with respect to each tender or within TEN (10) DAYS after the Date of Invoice, whichever is the later.</small>			24. BALANCE DUE <div style="text-align: right; font-size: 1.2em;">\$</div>

25. The agreed SHIPPING-POINT is _____ ;

26. The agreed DELIVERY-POINT is _____ ;

27. The agreed SHIPPING-DATE(S), as planned, is _____ , subject to available transportation and related weather, and the total and final shipment shall be completed no later than _____ ;

NOTICE TO BUYER & SELLER: CONTRACT TERMS AND CONDITIONS CONTINUE ON REVERSE SIDE HERETO AND ARE PART OF THIS AGREEMENT WITH FULL-FORCE AND EFFECT.

SELLER hereby agrees that he has READ BOTH SIDES OF AGREEMENT and agrees to and accept the terms and conditions hereto, including the EXPRESSED REPRESENTATIONS, RESPONSIBILITIES TO PERFORM AND REMEDIES as set forth.

BUYER hereby acknowledges that he has READ BOTH SIDES OF THIS AGREEMENT and agrees to and accepts the terms and conditions hereto, including the LIMITATION OF WARRANTIES, CONSEQUENTIAL DAMAGES AND REMEDIES as set forth.

Seller's Signature _____

Buyer's Signature _____

Business Name _____

Business Name _____

28. DATE OF ACCEPTANCE _____

28. DATE OF ACCEPTANCE _____

CONTRACT COPIED ON REVERSE SIDE

CONTRACT CONTINUED ON REVERSE SIDE

REVERSE SIDE OF THE UNIVERSAL SEED POTATO CONTRACT FOR SALE

TERMS AND CONDITIONS CONTINUED FROM FRONT SIDE — WITH FULL-FORCE AND EFFECT —

29. The agreed LATE PAYMENT CHARGES —

Notwithstanding the laws of any State or Federal law with respect to late payment charges, all accounts not paid-in-full as defined by the hereabove Item No. 24, will be subject to a LATE PAYMENT CHARGE equal to the maximum amount or rate permitted by law. If not otherwise prohibited, a LATE PAYMENT CHARGE will be imposed on the unpaid balance of all past due accounts, less the amount of payments received and any credits, at an ANNUAL PERCENTAGE RATE OF TWENTY-ONE PERCENT (21%), this is a periodic rate of 0.0575 percent per calendar day, calculated ten (10) days after the day on which the said seed potatoes are accepted at delivery by the receiver with respect to each tender or within ten (10) days after the Date of Invoice, whichever is the later, and until full-payment and all billed LATE PAYMENT CHARGES have been received by the seller. If full-payment is received within the 10 days after the said seed potatoes were accepted per tender or as otherwise provided, no LATE PAYMENT CHARGES will be imposed. Payments are applied to billed LATE PAYMENT CHARGES, next to old purchases, and then to newly unbilled purchases. If twenty-one percent (21%) is not allowed by the respective State law, then the maximum permitted amount or rate will be imposed accordingly.

30. The agreed EXCLUSION AND LIMITATION OF CERTAIN WARRANTIES —

Due to the fact that seed potatoes are: perishable vegetative tuber-seeds; unstable under certain conditions; easily contaminated or damaged through handling, shipment, storage, cutting, treating or planting; devitalized or weakened by mishandling or planting during unfavorable or moisture conditions. And because the handling, use, sanitation, cropping, germination, quality after shipping, and physical possession of the seeds are far beyond the control of the producer, SELLER, shipper or regulatory inspectors, including the Federal-State Inspection Service, State Seed Certification Agency, State Department of Agriculture, the following EXCLUDED AND LIMITED WARRANTIES ARE OFFERED FOR THE SEED POTATOES SOLD BY THIS AGREEMENT:

- a) The SELLER and the producer represent that the seed potatoes sold and to be shipped by this agreement conforms to the label (seed tag) description as required by the Seed State of Origin and/or Federal-State Inspection Laws, and will conform to the requirements specified in the above Items Number 4 through 13 of this agreement; and
- b) THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION OF THE FACE HEREOF. THE SELLER AND THE PRODUCER MAKE NO OTHER WARRANTIES, EXPRESSED OR IMPLIED, OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, FREEDOM FROM ANY LATENT POTATO DISEASE, VIRUS OR DISORDER OF ANY NATURE, OR OTHERWISE, AND IN ANY EVENT LIABILITY FOR BREACH OF ANY WARRANTY OR CONTRACT WITH RESPECT TO SUCH SEEDS IS LIMITED TO THE ACTUAL PURCHASE PRICE, AS PER TRADE TERMS OF SALE, ITEM NO. 12 HEREBE-
ABOVE.

31. The agreed LIMITATION OF CONSEQUENTIAL DAMAGES AND REMEDIES —

ANY DAMAGES ARISING OUT OF THIS CONTRACT SHALL BE LIMITED IN ALL EVENTS TO THE RETURN OF THE ACTUAL PURCHASE PRICE PAID AS PER TRADE TERMS OF SALE FOR SUCH SEEDS ON THAT PORTION OF THE SEED POTATOES ON WHICH A COMPLAINT MAY ARISE. THE SELLER OR PRODUCER SHALL NOT BE LIABLE FOR PROSPECTIVE PROFITS OR SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES. THE RETURN OF THE ACTUAL PURCHASE PRICE PAID AS PER TRADE TERMS OF SALE FOR SUCH SEEDS IS THE EXCLUSIVE AND SOLE REMEDY AVAILABLE TO THE BUYER OR USER OF THESE SEED POTATOES.

32. The agreed MISCELLANEOUS CONDITIONS OF SALE —

- a) CURRENCY. All prices, amounts and payments herein refer to and are payable in UNITED STATE OF AMERICA DOLLARS;
- b) TRADE TERMS AND DEFINITIONS. The P.A.C.A. "definitions" (Sec. 46.2) and "trade terms and definitions" (Sec. 46.43) of the official Regulations Under the Perishable Agricultural Commodities Act of 1930 as amended (issued under Sec. 15, 46 Stat. 537; 7 U.S.C. 4990) in effect at the time of the Date of Issuance of this agreement, shall be part of this CONTRACT FOR SALE and shall be binding upon the parties and have full-force and effect. The SELLER and the BUYER are both chargeable with having knowledge and skill peculiar to the said sections of the P.A.C.A. Regulations;
- c) FUTURE SALE BASED UPON WINTER TEST RESULTS. When the future sale of the said seed potatoes are subject to certain post-harvest winter test results or inspection tolerances, and should the said seed potatoes fail such test or tolerances, then the BUYER shall have the right to terminate and end this agreement without breach or recourse against either party, and furthermore, the BUYER shall have the right to receive full refund promptly, without interest, upon request for any and all money paid for the said seed potatoes;
- d) LIMITATION OF PERFORMANCE—REFUND. The SELLER or producer shall not be liable, or breach, except to fully refund promptly, without interest, any and all money received as partial or full-payment for the said seed potatoes, for failure to perform or deliver tender pursuant to this agreement when such failure is caused by: (1) crop rejection or disqualification by an official State Seed Certification Agency whatever the cause; (2) shipping or transportation related stoppages, damages, strikes, accidents or mishaps, fires, thefts, or failure to perform as per contract-of-haul; or (3) Acts of God or natural disasters, storms, floods, frost or freeze, hail, disease, virus, pathogens, fires or other circumstances beyond the SELLERS or producers control relating to the said seed potatoes, either as crops, farm products in storage, or goods;
- e) OFF-SIZE TOLERANCES. Notwithstanding the Seed State of Origin regulation regarding off-size tolerances for the respective grade (Item 9 above), and if not otherwise agreed, (1) FOR UNDERSIZE: 3% for potatoes in any load lot which fail to meet the required or specified minimum size except that 5% shall be allowed when the minimum size specified is 2 1/4 inches or more in diameter, or 5 ounces in weight; and (2) FOR OVERSIZE: 10% for potatoes in any load lot which fail to meet the required or specified maximum size;
- f) WEIGHT TOLERANCES. Shipments may vary as to actual weight per load, or contract, because of carrier weight limitations, in such case, the final balance due (and freight) shall be determined by multiplying the "actual shipping-point CWT weight" times the "price per CWT"; and
- g) DELIVERY IN LOAD LOTS. Unless otherwise agreed, it is agreed and understood that shipment and delivery of the said seed potatoes shall be tendered in one or more truck/load or railcar/load lots throughout the agreed SHIPPING DATE(S) and until the total quantity is tendered. Each shipment/delivery shall be the equivalent of a separate contract. Payment may be demanded for one or more load lots upon acceptance as per this agreement or as a single payment upon final invoice as per this agreement.

33. The agreed STATUTE OF LIMITATION—TERRITORIAL APPLICATION —

- a) It is agreed that any action for breach of this CONTRACT FOR SALE or of any warranty, express or implied, must be commenced within one (1) year after the cause of action has occurred; and
- b) It is agreed that the laws of the "Seed State of Origin" as specified hereabove in Item No. 4, and none other, govern this agreement, sales transaction and seed product. If any legal action is brought, the agreed place of venue is to be the "Seed State of Origin."

34. SUCCESSORS AND ASSIGNS AGREEMENT —

This agreement shall be binding and have full-force and effect on the heirs, executors, administrators, successors and assigns of the parties hereto.

35. SEVERABILITY AGREEMENT —

If a part of this contract is found invalid by a court of law, all valid parts that are severable from the invalid parts remain in effect. If a part of this contract is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

HB 47
1/12/82

Exhibit D

Amendments to HB 47

1. Title, line 5.
Following: "TO"
Insert: "CLARIFY THE MEANING OF IMPLIED RULEMAKING AUTHORITY AND TO"

2. Page 1, line 11.
Following: "Section 1."
Insert: "Section 2-4-102, MCA is amended to read:
"2-4-102. Definitions. For purposes of this chapter, the following definitions apply:
(1) "Administrative code committee" or "committee" means the committee provided for in Title 5, chapter 14.
(2) "Agency" means any agency, as defined in 2-3-102, of the state government, except that the provisions of this chapter do not apply to the following:
(a) the state board of pardons, except that the board shall be subject to the requirements of 2-4-103, 2-4-201, 2-4-202, and 2-4-306 and its rules shall be published in the administrative rules of Montana and Montana administrative register;
(b) the supervision and administration of any penal institution with regard to the institutional supervision, custody, control, care, or treatment of youths or prisoners;
(c) the board of regents and the Montana university system;
(d) the financing, construction, and maintenance of public works.
(3) "ARM" means the administrative rules of Montana.
(4) "Contested case" means any proceeding before an agency in which a determination of legal rights, duties, or privileges of a party is required by law to be made after an opportunity for hearing. The term includes but is not restricted to ratemaking, price fixing, and licensing.
(5) "License" includes the whole or part of any agency permit, certificate, approval, registration, charter, or other form of permission required by law but does not include a license required solely for revenue purposes.
(6) "Licensing" includes any agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, transfer, or amendment of a license.
(7) "Party" means any person named or admitted as a party or properly seeking and entitled as a right to be admitted as a party, but nothing herein shall be construed to prevent an agency from admitting any person as a party for limited purposes.

(8) "Person" means any individual, partnership, corporation, association, governmental subdivision, agency, or public organization of any character.

(9) "Register" means the Montana administrative register.

(10) "Rule" means each agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of an agency. The term includes the amendment or repeal of a prior rule but does not include:

(a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public;

(b) formal opinions of the attorney general and declaratory rulings issued pursuant to 2-4-501;

(c) rules relating to the use of public works, facilities, streets, and highways when the substance of such rules is indicated to the public by means of signs or signals;

(d) seasonal rules adopted annually relating to hunting, fishing, and trapping when there is a statutory requirement for the publication of such rules and rules adopted annually relating to the seasonal recreational use of lands and waters owned or controlled by the state when the substance of such rules is indicated to the public by means of signs or signals;

(e) rules implementing the state personnel classification plan, the state wage and salary plan, or the statewide budgeting and accounting system;

(f) uniform rules adopted pursuant to interstate compact, except that such rules shall be filed in accordance with 2-4-306 and shall be published in the administrative rules of Montana.

(11) "Substantive rules" are either:

(a) legislative rules, which if adopted in accordance with this chapter and under expressly delegated authority to promulgate rules to implement a statute have the force of law and when not so adopted are invalid; or

(b) adjective or interpretive rules, which may be adopted in accordance with this chapter and under express or implied authority to codify an interpretation of a statute. Such interpretation lacks the force of law. However, such interpretation does have force and effect of law to the extent that it is consistent with subsequent judicial interpretations of the statute."

Renumber: all subsequent sections

WITNESS STATEMENT

NAME Steve Brown BILL No. H.B. 27
ADDRESS 1313 11th Ave. DATE 1/12/83
WHOM DO YOU REPRESENT Self
SUPPORT _____ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

X Interested person who wishes to make comments

Comments:

VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

BILL House Bill 60

Date January 11, 1983

SPONSOR Rep. Shontz

NAME	RESIDENCE	REPRESENTING	SUP- PORT	OP- POSE
Paul Kelley	1330 Le Grande Helena, MT	Grace Gospel		X
David Dill	4450 Hi 13E Helena	East Helena 4 square		X
Steve Valentini	2410 56 th Missoula	Missoula Community Ch		X
Mike McQueen	311 Ben Hogan Dr.	Missoula Foursquare Ch.		X
Gregory Amundson	Box 4143	" "		X
Carol Davis	Sunburst, MT	Grace Gospel		X
Earl DeHagen	N.W. 5340 Teepee Dr. Florence, MT	F. Lorne Bible Church		X
MARC RACKOS	Helena	County Attorneys		
Charlotte Jahn	Helena	Women's Lobby		
Julie Crane	2040 Orofino Dr. Helena	Freedom Church		X
Glenn Lindsey	Box 478 Valier, MT	Grace Gospel		X
Victor P. Chipin	Helena	East Helena 4 sq Ch.		X
Calvin C. Harey	Dillon	Faith Gospel Baptist Ch.		
James Ford	Helena	Attorney for Ministers		X
Bob Miller	Butte	20 Fossil Court		X
Bill Davenport	5399 Shuman, Helena	Faith Gospel Baptist		X
Stephen R. Gray	Butte	Old Fashion Baptist		X
John Funkhouser	Helena	Mt. Cash Conf.		X

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITOR'S REGISTER

HOUSE JUDICIARY COMMITTEE

BILL House Bill 27

DATE January 12, 1983

SPONSOR KOEHNKE

NAME	RESIDENCE	REPRESENTING	SUP- PORT	OP- POSE
Mike Koehnke	Townsend	SELF	✓	
Larry Wenzel	Helena	MT. UNION SCS		
John Sullivan	Helena	SELF	✓	
Roy Bjornson	Helena	Mont. Dept of Ag	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

