

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
REPORT TO THE 50TH LEGISLATIVE SESSION

January 12, 1987

The meeting of the Judiciary Committee was called to order by Chairman Earl Lory on January 12, 1987, at 8:00 a.m. in Room 312-D of the State Capitol.

ROLL CALL: All members were present.

HOUSE BILL NO 13, Rep. Mercer, sponsor, submitted this bill by request of the joint interim subcommittee on lien laws. This bill amends section 31-2-106, MCA, to include as exempt property in a bankruptcy proceeding all property of an individual debtor exempt from execution of judgment as provided in the Montana Code Annotated. Rep. Mercer stated that this bill lays the ground work for who should have lien rights and who should not. The bankruptcy act did not exempt many items and it appeared many items were limited. This bill clarifies property exempt in bankruptcy proceedings when it is in an estate.

SUPPORTERS:

ROBERT C. PYFER, Vice President, Governmental Relations for the Montana Credit Unions League, feels this is a good bill.

No further supporters and no opponents.

REP. MERCER closed the hearing on HB #13.

HOUSE BILL NO. 19, Rep. Mercer sponsor, submitted this bill by request of the interim subcommittee on lien laws. This bill deals with the general revision of laws relating to property exempt from execution and repeals sections 25-13-611 through 25-13-613, 25-13-616, and 25-13-617, MCA. Rep. Mercer explained how this bill sets out procedure covering homesteads and estates. The bill removes many unfair, confusing and inequitable listings of specific exempt property and substitutes general categories with dollar limitations.

SUPPORTERS:

ROBERT C. PYFER, Vice President, Governmental Relations for the Montana Credit Unions League, submitted written testimony. (Exhibit A). He feels HB #19 represents a true modernization of archaic exemption laws but objected to the large dollar amounts that are set for certain categories of property. He submitted amendments. (Exhibit B). Mr. Pyfer

explained that generally, bankruptcy was governed by federal law and state legislature are prohibited from acting in this area. However, the federal law does allow the states to opt to use only their exempt property laws in bankruptcy proceeding in lieu of the federal bankruptcy code exemptions. If a state does not exercise this option, a debtor may choose either the federal exemptions or the state exemptions. The Montana state legislature can not do anything about the federal bankruptcy laws in general. However, it can act in this one area that affects bankruptcies. The legislature should attempt to alleviate or at least not aggravate the problem. Montana opted out of the federal exemptions because they were too liberal in 1981 by enacting Section 31-2-106, MCA. Mr. Pyfer submitted an exemption comparison table. (Exhibit C). He stated that this table shows that the study committee recommendations incorporated in HB #19 are much higher for certain categories than the federal bankruptcy code. He feels it does not make sense to go far beyond the federal bankruptcy code in 1987 just six short years after Montana opted out of the federal exemptions because they were too liberal. He stated also that the bankruptcy code and high exemptions hurt consumers and small business people because the availability of credit is affected. He feels that any major departure from the federal bankruptcy exemptions, which, again are themselves considered liberal, would create a serious imbalance between creditor and debtor.

QUESTIONS (OR DISCUSSION) ON HOUSE BILL NO. 19:

REP. ADDY asked Mr. Pyfer why he was opposed to a life insurance policy as a cash value. Mr. Pyfer stated that he felt a life insurance policy should be limited to \$2000.00 cash value because it was just another type of cash investment.

REP. HANNAH asked Mr. Pyfer if all the exemptions are net values after loans and he answered that they were.

REP. EUDAILY asked Rep. Mercer why jewelry was listed in such a high amount. Rep. Mercer answered that jewelry has a sentimental value and the value is greater for sentimental purposes.

REP. MERCER closed the hearing.

CHAIRMAN EARL LORY asked the committee to consider the amendments that have been submitted and asked Rep. Mercer to work with Mr. MacMaster on further amendments for HB #19.

EXECUTIVE SESSION:

ACTION ON HOUSE BILL NO. 13

REP. ADDY moves DO PASS.

REP. MERCER questions the effective date and suggests an amendment be made. Rep. Miles supports this and states we need to clarify this as soon as possible. Rep. Mercer moves the amendment to include an effective date of July 1. Question is called for and a voice vote is taken with all members voting IN FAVOR. HB #13 DO PASS AS AMENDED.

ADJOURNMENT: Motion having been made and seconded and there being no further business to come before this committee, the hearing was adjourned at 11:00 a.m.



REP. EARL LORY, Chairman

DAILY ROLL CALL

JUDICIARY

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Jan. 13, 1987

NAME	PRESENT	ABSENT	EXCUSED
EARL LORY (R)	✓		
JOHN MERCER (R)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)		W ✓	✓
TOM BULGER (D)	✓		
JOHN COBB (R)	✓		
FRITZ DAILY (D)	✓	Z	
PAULA DARKO (D)	✓		
RALPH EUDAILY (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
ED GRADY (R)	✓	W	
TOM HANNAH (R)	✓	W	
VERNON KELLER (R)	✓		
AL MYERS (R)	✓		
JOAN MILES (D)	✓	W	
PAUL RAPP-SVRCEK (D)	✓		
BILL STRIZICH (D)	✓		
JOHN McMASTER			

STANDING COMMITTEE REPORT

January 12,

19 87

Mr. Speaker: We, the committee on JUDICIARY

report on House Bill No. 13

do pass
 do not pass

be concurred in
 be not concurred in

as amended
 statement of intent attached

Chairman

"AN ACT TO AMEND SECTION 31-2-106, MCA, TO INCLUDE AS EXEMPT PROPERTY IN A BANKRUPTCY PROCEEDING ALL PROPERTY OF AN INDIVIDUAL DEBTOR EXEMPT FROM EXECUTION OF JUDGMENT AS PROVIDED IN THE MONTANA CODE ANNOTATED."

AMENDMENTS TO HOUSE BILL NO. 13, INTRODUCED COPY, ADOPTED BY HOUSE JUDICIARY COMMITTEE.

1. Title, line 10.

Following: "ANNOTATED"

Insert: "; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY PROVISION"

2. Page 1.

Following: line 23

Insert: "NEW SECTION. Section 2. Effective date -- applicability. This act is effective on July 1, 1987, and applies only to bankruptcy petitions filed on or after July 1, 1987."

JMS

FIRST

reading copy (WHITE)
color

EXHIBIT A
DATE 1-12-87
HB No. 19

HOUSE BILL 19

Testimony of Robert C. Pyfer
Vice President, Governmental Relations
Montana Credit Unions League

Before the House Judiciary Committee

January 12, 1987

Mr. Chairman and members of the committee, for the record I am Bob Pyfer, Vice President, Governmental Relations for the Montana Credit Unions League. The league is a trade association representing 109 of Montana's 111 credit unions.

We appear in support of HB 19, although we will be offering some amendments. We praise the work of the Interim Subcommittee on Lien Laws, as HB 19 represents a true modernization of our archaic exemption laws. The bill removes many unfair, confusing, and inequitable listings of specific exempt property and substitutes general categories with dollar limitations. We applaud this general approach to modernizing the existing law, but we must object to the large dollar amounts that are set for certain categories of property.

Generally, bankruptcy is governed by federal law, and state legislatures are prohibited from acting in this area. However, the federal law does allow the states to opt to use only their exempt property laws in bankruptcy proceedings in lieu of the federal bankruptcy code exemptions. If a state does not exercise this option, a debtor may choose either the federal exemptions or the state exemptions. The federal bankruptcy code exemptions are considered quite liberal among the states.

Page 2

Indeed most states have opted out of the federal exemptions and for their own state exemptions because the federal exemptions are considered too liberal. The federal exemptions were most recently reviewed and updated by Congress in 1984.

Montana opted out of the federal exemptions because they were too liberal in 1981 by enacting Section 31-2-106, MCA. Please refer to the exemption comparisons table, which I have provided to the committee. As you can see from the table, the study committee recommendations incorporated in HB 19 are much higher for certain categories than the federal bankruptcy code. Does it make sense to go far beyond the federal bankruptcy code in 1987 just six short years (that were not inflationary years) after Montana opted out of the federal exemptions because those exemptions were too liberal? That is to say, Montana just recently opted out of the federal exemptions because they were too liberal--why are we now being asked to accept exemptions which are much higher than those liberal federal exemptions? There has been considerable reference to the Montana Constitution Article 13, Section 5, which speaks of liberal exemption laws. However, this is nothing new in the 1972 Constitution. The section is identical to Article 19, Section 4, of the 1889 Constitution except that the term "legislature" is substituted for "legislative assembly." In 1899 the Supreme Court in Yerrick V. Higgins, 22 Mont. 502, 57P.95, stated that the legislature is free to establish the amounts of the exemptions and the mode of obtaining them. While this was not the main holding in the case, it does provide guidance that the legislature is not so constitutionally restricted in this area as some seem to think--

certainly it is not restricted to the extent of requiring exemption laws much more liberal than the federal code exemptions, which are considered liberal among the states. No cases have been cited where exemptions have been declared unconstitutional for not being sufficiently liberal. I don't believe anyone could seriously argue that our suggested amendments would not pass constitutional muster.

Furthermore, it is important to note that decisions rendered under this section of the Constitution call for liberal construction of the exemption laws in favor of the debtor. Therefore, anything that the legislature enacts in this area will be liberally interpreted in favor of the debtor.

Consumer financial cooperatives, like credit unions, can't stand heavy losses from bankruptcy because many credit unions are small and without large undivided earnings. Credit unions are directed by uncompensated volunteer directors. Losses don't just affect a select group of stockholders, but affect all consumer members of the credit union. Shares (deposits) are insured, but future services to members could be affected.

There is a general sense of frustration among credit union managers who encounter bankruptcies. Credit unions tend to try especially hard to accommodate members and so feel especially "burned" when a member files for bankruptcy.

A
DATE 1-12-87
HB #19

There is frustration in the fact that there is virtually no insolvency requirement for bankruptcy and that in order to reaffirm a debt to the credit union a member's attorney must approve the reaffirmation. High exemptions would merely serve to aggravate this frustration.

The bankruptcy code and high exemptions hurt consumers and small business people because the availability of credit is affected. Doug James, a Billings bankruptcy lawyer, gives the example that a non-purchase money security interest in exempt property is no good in a bankruptcy proceeding. He, therefore, advises his lender clients not to make such loans. Montana's present economy being what it is, now is not the time to further hamper availability of credit.

The Montana state legislature can't do anything about the federal bankruptcy laws in general. However, it can act in this one area that affects bankruptcies. The legislature should attempt to alleviate or at least not aggravate the problem. We therefore offer amendments to HB 19 which really do nothing more than avoid aggravating the existing frustration with bankruptcies. The amendments correspond exactly to the credit union league proposal found on the Exemption Comparisons table. You can see that our amendments are more in line with the federal bankruptcy code exemptions. We feel that any major departure from the federal exemptions, which, again are themselves considered liberal, would create a serious imbalance between creditor and debtor.

Now I will make a few brief comments about each of our suggested amendments.

Motor vehicle -- The present law is \$1,000. It was just raised in 1981 from \$300. HB 19 would increase the exemption by well over 300% just 6 non-inflationary years after it was last increased. We suggest \$1,200, the same as the federal code.

Personal, household possessions -- Our suggestion is basically equivalent to the federal code. We lump the federal code's \$500 for jewelry into the general amount. However, our proposal would allow a \$400 per item limit as opposed to the federal code's \$200 per item limit.

Tools of trade -- We suggest \$1,100, which is higher than the federal code, but we do not provide the \$400 "floater" of the federal code.

Life insurance -- We suggest \$2,000 for cash value. This is lower than the federal code. Insurance value of this type is more an investment than a death benefit. We feel such property does not merit special protection and should not be exempt at all. However, we would not object to exemption of death benefits where the debtor is a dependent of the insured. Such a provision does not appear to be included in the bill.

Homestead -- Our homestead exemption is among the very highest in the country. I believe it was mentioned during the study process that we are in

the top three states. We don't feel this comparatively high exemption is justified when the cost of real property in Montana is low as compared to other states.

Thank you for your attention and consideration. We urge you to view our amendments favorably. If there are any questions, I would be happy to try to answer them.

House Bill No. 19
Proposed Amendments

B
1-12-87
HB #19

1. Page 2, line 20.
Following: line 19
Strike: "\$6,000"
Insert: "\$4,500"
2. Page 2, line 21.
Following: "exceeding"
Strike: "\$600"
Insert: "\$400"
3. Page 2, line 25.
Following: line 24
Strike: "\$3,500"
Insert: "\$1,200"
4. Page 3, line 2.
Following: line 1
Strike: "\$3,000"
Insert: "\$1,100"
5. Page 3, line 6.
Following: line 5
Strike: "\$4,000"
Insert: "\$2,000"
6. Page 7, line 15.
Following: "~~sum-of~~"
Strike: "\$40,000"
Insert: "\$30,000"
7. Page 14, line 20.
Following: "value"
Strike: "\$40,000"
Insert: "\$30,000"

EXHIBIT C
DATE 1-12-87
HB No. 19

EXEMPTION COMPARISONS

	<u>Study Committee Recommendation</u>	<u>Federal Bankruptcy Code</u>	<u>Credit Union League Proposal</u>
Motor Vehicle	\$3500	\$1200	\$1200
Personal, household possessions	\$6000 but not more than \$600 per item	\$4000 but not more than \$200 per item (plus \$500 for jewelry)	\$4500 but not more than \$400 per item
Tools of trade	\$3000	\$ 750	\$1100
Life insurance	Unmatured policy cash value \$4000	Unmatured policy cash value \$4000	Unmatured policy cash value \$2000
Residence	Retain current \$40,000 Homestead	\$7500	Reduce Home- stead to \$30,000

Note: Bankruptcy
Code allows additional
"floating" \$400 for
any property

WITNESS STATEMENT

NAME Bob Pyser (see for 11B 19) H BILL NO. 13

ADDRESS _____ DATE _____

WHOM DO YOU REPRESENT? _____

SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

WITNESS STATEMENT

NAME Bob Byser ¹⁺ BILL NO. 19
ADDRESS 1236 Helena Ave DATE 1/12/57
WHOM DO YOU REPRESENT? Mont. Credit Unions League
SUPPORT ✓ OPPOSE _____ AMEND ✓

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

