

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bill Strizich, on March 18, 1991, at 10:00 a.m.

ROLL CALL

Members Present:

Bill Strizich, Chairman (D)
Vivian Brooke, Vice-Chair (D)
Arlene Becker (D)
William Boharski (R)
Dave Brown (D)
Robert Clark (R)
Paula Darko (D)
Budd Gould (R)
Royal Johnson (R)
Thomas Lee (R)
Bruce Measure (D)
Charlotte Messmore (R)
Linda Nelson (D)
Jim Rice (R)
Angela Russell (D)
Jessica Stickney (D)
Howard Toole (D)
Diana Wyatt (D)

Members Excused: Rep. Keller, Rep. Whalen

Staff Present: John MacMaster, Legislative Council
Jeanne Domme, Committee Secretary

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

**HEARING ON SB 392
ALLOW PUBLIC ACCESS TO BIRTH AND DEATH RECORDS**

Presentation and Opening Statement by Sponsor:

SEN. KEATING, SENATE DISTRICT 44, stated that SB 392 deals with death certificates of records in the county records and eases the restriction for access to their records by people who are doing title searches. There are reasons to restrict access to birth

certificates because of confidential information or embarrassing situations, therefore birth certificates are usually more restricted than death certificates.

Proponents' Testimony: NONE

Opponents' Testimony:

Sam Sperry, Chief - Vital Records and Statistics Bureau - Montana Department of Health and Environmental Sciences, stated that the Department does not wish to air the issues addressed by the bill but would ask the committee for its considered deliberation of clarifying the language as proposed. He stated the Department's concern is with subsection 3, on section 1 of the bill. The Department had the opportunity to work with the bill sponsor and the legislative council on amendments to this bill. The Legislative Council had advised the Department that in subsection c "a" death certificate also includes the plural. He stated that the Department's concern is that the language as currently stands simply permits a general perusal of death certificates on the part of the County Clerk and Records Office. The Department asks the committee for some clarification of that subsection.

Questions From Committee Members:

REP. TOOLE stated that he is concerned about opening up death certificates. He felt the reason that the records are kept in the Clerk and Records Office is because they are private. This bill seems to be saying anybody can get a death certificate from the Clerk and Recorder's Office and Rep. Toole stated that he had trouble with that aspect of the bill.

SEN. KEATING stated that if the committee would look at section one of the bill, on lines 15, 16 and 17, the Clerk and Recorder may not permit inspection of records or issue copies of the certificate unless it is satisfied that the applicant has a direct and tangible interest in the data recorded and the information is necessary for the determination of the personal or property rights. He stated that the amendment falls within the intention of the law and if anyone wants to cause mischief, they are able to under present law.

REP. BROOKE asked **SEN. KEATING** if the Department of Health had the same concern in the Senate hearing? **SEN. KEATING** said that they did and that is why the Senate tightened up the bill before it came to the House.

REP. RICE asked **SEN. KEATING** if he would object to an amendment to restrict it to the cases where the land owner already had the name he was looking for prior to the request. **SEN. KEATING** stated that he didn't know how language could be drafted to limit it any more than it already is.

REP. RICE asked SEN. KEATING if the person has the name when they get the change of title? SEN. KEATING stated that the only reason someone looks for a death certificate is because they come to a blank wall in the change.

Closing by Sponsor: NONE

HEARING ON SB 308
ELIMINATE ADVANCED AGE FROM DEFINITION
OF "INCAPACITATED PERSON" IN PROBATE

Presentation and Opening Statement by Sponsor:

SEN. ECK, SENATE DISTRICT 40, stated that this bill is important to people who are approaching advanced age. SB 308 deals with the laws relating to guardianships and conservatorship and removes the words "advanced age" from the criteria use in defining an incapacitated person. She stated that "advanced age" is discrimination that should be removed from the books.

Proponents' Testimony:

John Melcher Jr., Staff Attorney - Department of Family Services, gave written testimony in favor of SB 308. EXHIBIT 1

Le Dean Lewis, American Association of Retired Persons, gave written testimony in favor of SB 308. EXHIBIT 2

Hank Hudson, Government Advisory Council on Aging, stated that it is very important that Montana states that no one should have guardianship established over them for an arbitrary reason depending on their age. He stated this bill is a positive lesson that Montana Senior Citizens are a valuable resource and have the same rights as the other citizens in the state.

Opponents' Testimony: NONE

Questions From Committee Members: NONE

Closing by Sponsor: NONE

EXECUTIVE ACTION ON SB 308

Motion: REP. STICKNEY MOVED SB 308 DO BE CONCURRED IN.

Discussion:

REP. JOHNSON stated that he is in full support of this bill.

REP. MEASURE stated that he is concerned about the deletion of "advanced age". He stated that he works with many of these people and the advanced age being talked about. It is not an 85 year old individual who is highly competent, but who is physically and somewhat mentally impaired. He felt there should be something put in place of "advanced age" if it is taken out of the bill.

REP. STICKNEY stated that the whole point of the bill is the problem of each separate individual not the age of each individual.

Vote: Motion carried unanimously.

EXECUTIVE ACTION ON SB 392

Motion: REP. BOHARSKI MOVED SB 392 BE CONCURRED IN.

Motion: REP. TOOLE moved to amend SB 392 on line 4, page 2, after the word "may" add ", if satisfied that the information is necessary for the determination of person or property rights,."

Discussion:

REP. TOOLE stated that if a person comes in and is looking for something and looks in the statue and sees the criteria he/she has to meet before they can have the information they need, they will realize they will be liable if they don't follow the law.

John MacMaster stated that the committee should just repeat the language on lines 6 and 7.

REP. TOOLE stated that he would take out "person or" from his amendment.

Vote: Motion carried unanimously.

Motion/Vote: REP. BOHARSKI MOVED SB 392 BE CONCURRED IN AS AMENDED. Motion carried unanimously.

EXECUTIVE ACTION ON HB 903

Motion: REP. JOHNSON MOVED HB 903 DO PASS AS AMENDED.

Motion/Vote: REP. JOHNSON moved to amend HB 903 with the amendments proposed by Jim Opindol. EXHIBIT 3 Motion carried unanimously.

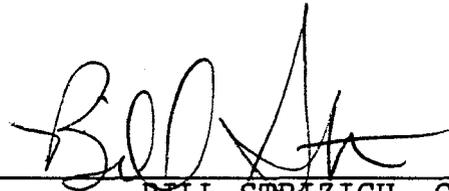
Motion: REP. JOHNSON MOVED HB 903 DO PASS AS AMENDED.

Discussion: REP. BOHARSKI stated that this is a horrible way to raise money by adding a dollar to everyone's license plates.

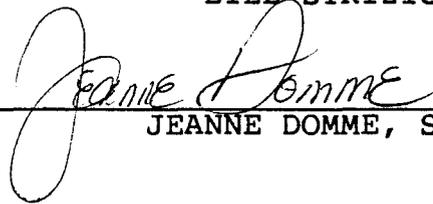
Vote: Motion carried 10 - 7 with Rep's: Boharski, Lee, Rice, Gould, Clark, Nelson, Keller voting no.

ADJOURNMENT

Adjournment: 11:05 a.m.



BILL STRIZICH, Chair



JEANNE DOMME, Secretary

BS/jmd

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE 3-18-91

NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR	✓		
REP. ARLENE BECKER	✓		
REP. WILLIAM BOHARSKI	✓		
REP. DAVE BROWN	✓		
REP. ROBERT CLARK	✓		
REP. PAULA DARKO	✓		
REP. BUDD GOULD	✓		
REP. ROYAL JOHNSON	✓		
REP. VERNON KELLER			✓
REP. THOMAS LEE	✓		
REP. BRUCE MEASURE	✓		
REP. CHARLOTTE MESSMORE	✓		
REP. LINDA NELSON	✓		
REP. JIM RICE	✓		
REP. ANGELA RUSSELL	✓		
REP. JESSICA STICKNEY	✓		
REP. HOWARD TOOLE	✓		
REP. TIM WHALEN		✓	
REP. DIANA WYATT	✓		
REP. BILL STRIZICH, CHAIRMAN	✓		

HOUSE STANDING COMMITTEE REPORT

March 19, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that
Senate Bill 308 (third reading copy -- blue) be concurred in .

Signed: 
Bill Strizich, Chairman

Carried by: Rep. J. Thompson

2:40
3-18-91
JDB

HOUSE STANDING COMMITTEE REPORT

March 18, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 392 (third reading copy -- blue) be concurred in as amended.

Signed: 

Bill Strizich, Chairman

Carried By: Rep. J. Rice

And, that such amendments read:

1. Page 2, line 4.

Following: "MAY"

Insert: ", if satisfied that the information is necessary for the determination of property rights,"

2. Page 2, line 5.

Strike: "ISSUES"

Insert: "ISSUE"

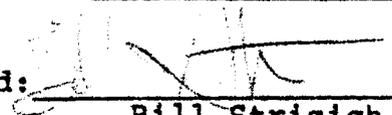
2:40
3-19-91
JDB

HOUSE STANDING COMMITTEE REPORT

March 19, 1991

Page 1 of 2

Mr. Speaker: We, the committee on Judiciary report that House Bill 903 (first reading copy -- white) do pass as amended.

Signed: 
Bill Strizich, Chairman

And, that such amendments read:

1. Page 4.

Following: line 21

Insert: "NEW SECTION. Section 8. Coordination instruction.

(1) If House Bill No. 579 is passed and approved, then [section 1 of this act] is replaced with the following section:

"NEW SECTION Section 1. Unified county motor vehicle computer/court automation fee. (1) A unified county motor vehicle computer fee/special court automation fee of \$1 must be assessed on the annual registration or reregistration of or payment of a fee in lieu of tax on the following:

- (a) motor vehicles subject to registration or reregistration under Title 61, chapter 3;
- (b) boats subject to the fee in lieu of tax under Title 23, chapter 2, part 5;

(c) snowmobiles subject to registration or reregistration under Title 23, chapter 2, part 6; and

(d) off-highway vehicles subject to the fee in lieu of tax under Title 23, chapter 2, part 8.

(2) The fee must be collected by the county treasurer and forwarded to the state treasurer for deposit in the county motor vehicle computer fund established in [section 12 of House Bill No. 579] and the court automation account established in [section 2 of this act], as follows:

(a) In fiscal year 1992, 75 cents of the fee is allocated to the county motor vehicle computer fund and 25 cents of the fee is allocated to the court automation account.

(b) In fiscal year 1993, 50 cents of the fee is allocated to the county motor vehicle computer fund and 50 cents of the fee is allocated to the court automation account.

(c) After fiscal year 1993, the entire fee is allocated to the court automation account."

(2) If House Bill No. 579 is passed and approved, then [section 11 of House Bill No. 579] is void and the reference to section 11 in [section 12 of House Bill No. 579] is changed to refer to

[section 1 of this act].

(3) If House Bill No. 579 is passed and approved, then [section 5 of this act] is void and the reference in [section 2 of this act] to 61-3-509 is changed to refer to [section 1 of this act].

(4) If House Bill No. 579 is passed and approved, then [section 6 of this act] is replaced with the following:

"NEW SECTION. Section 6. Appropriation. There are appropriated to the supreme court from the court automation account in the state special revenue fund the following amounts for court automation:

FY 1992	\$ 230,000
FY 1993	459,000"

Renumber: subsequent sections

DEPARTMENT OF FAMILY SERVICES

EXHIBIT 1
DATE 3-18-91
SB 308



STAN STEPHENS, GOVERNOR

(406) 444-5900

STATE OF MONTANA

P.O. BOX 8005
HELENA, MONTANA 59604

TESTIMONY IN SUPPORT OF SB 308

AN ACT TO REMOVE ADVANCED AGE
AS ONE OF THE IMPAIRMENTS WHICH GIVE RISE TO THE
NEED FOR APPOINTING A GUARDIAN FOR AN INCAPACITATED PERSON

Submitted by John Melcher, Jr.
Staff Attorney for the Department of Family Services

This bill removes advanced age from the list of conditions expected to cause an incapacitating condition leading to guardianship or conservatorship. The American Association of Retired Persons (AARP) has for several years criticized definitions of incapacity which include advanced age arguing that advanced age in and of itself is not a condition triggering incapacity.¹ In 1989, an analysis by the State Legislation Department of the AARP specifically considered Montana's definition of incapacity. The study concluded that advanced age should be removed from the definition to help insure that the criteria for a finding of incapacity is based on actual functional limitations rather than preconceptions on the ability of the elderly to care for themselves.² The American Bar Association's Commission on Legal Problems of the Elderly has also complained that too many definitions of incapacity focus on age instead of the functional problems which actually justify judicial intervention through guardianship or conservatorship.³

The Department of Family Services agrees with the AARP and ABA analysis. The Department is also confident that removal of advanced age from the list of conditions expected to cause incapacity will not limit the ability of the district courts to properly adjudicate incapacity. The definition of incapacity in

¹ J. McPhearson, AARP Criminal Justice Division, Domestic Mistreatment of the Elderly, p. 24 (1987);

² J. Heller, State Legislation Department of the American Association of Retired Persons, Report on State Surrogate Financial Statutes, p. 6 (1989); see also Appendix to State Surrogate Statutes, Montana State Profile, p. 3 (1989).

³ R. Brown, American Bar Association Commission on Legal Problems of the Elderly, National Symposium Proposes Recommendations to Improve the Guardianship System, p. 5 (Fall, 1988).

Ex. 1

3-18-91

SB 308

the code already encompasses all conceivable causes for incapacity by stating that incapacity may spring from the specific conditions listed, or from "other cause (except minority)". Therefore, while the deletion of advanced age will not narrow judicial inquiry into the cause of an alleged incapacity, it will clarify that advanced age alone is not cause for incapacity.



Ex. 1
3-18-91 2
SB 308

Bringing lifetimes of experience and leadership to serve all generations.

MONTANA STATE LEGISLATIVE COMMITTEE

CHAIRMAN
Mr. Fred Patten
1700 Knight
Helena, MT 59601
(406) 443-3696

VICE CHAIRMAN
Mr. Paul Stengel
Route 2, Box 3040
Miles City, MT 59301
(406) 232-0016

SECRETARY
Mrs. Dorothy Fitzpatrick
Box 174
Sunburst, MT 59482
(406) 937-2451

March 18, 1991

TO: The House Judiciary Committee

FROM: Le Dean Lewis, American Association of Retired Persons

RE: Senate Bill No. 308
Eliminate Advanced Age From The Definition of
"Incapacitated Person"

The American Association of Retired Persons position on this bill is:

"The evidence used to determine incapacity should be based on functional criteria rather than on arbitrary factors such as age, eccentricity, poverty, or a medical diagnosis alone".

I would like to call your attention to the chart attached to my testimony. Passage of this bill would make Montana one of the few states in the west, that has developed stronger and more comprehensive safeguards to protect our vulnerable seniors during competency hearings or when protective services are sought.

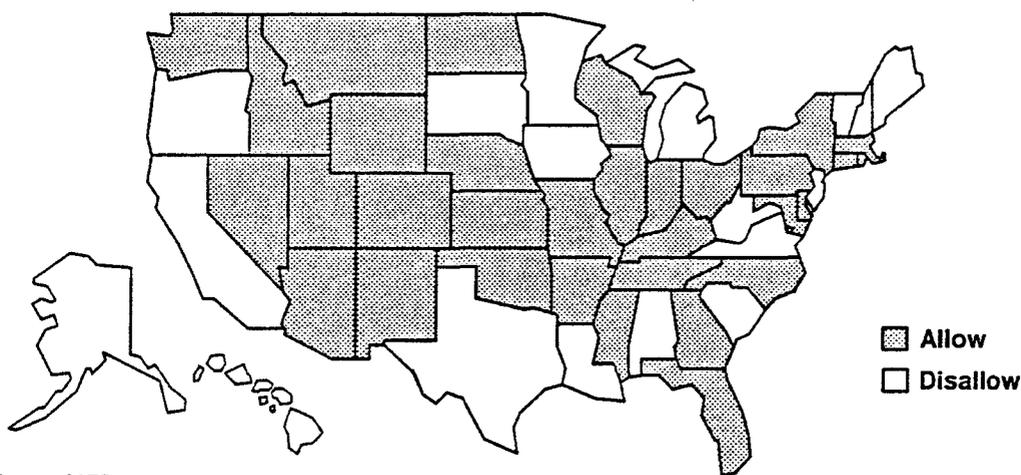
The American Association of Retired Persons supports SB-308.

Ex. 1

3-18-91

SB 308

States Which Allow "Advanced Age" as Cause for Determining Incompetence



Source: AARP
Prepared by AARP Public Policy Institute

AMENDMENT TO HB 903
INTRODUCED BILL

1. Page 4, line 25.

Following: line 25

Insert: "Section 10. Coordination Instruction. (1) If House Bill 579 is passed and approved, there is a new section 1 that reads:

NEW SECTION **Section 1. Unified county motor vehicle computer/court automation fee.** (1) A unified county motor vehicle computer fee/special court automation fee of \$1 must be assessed on the annual registration or reregistration of the following:

- (a) motor vehicles subject to registration or reregistration under Title 61, chapter 3;
- (b) boats subject to registration or reregistration under Title 23, chapter 2, part 5;
- (c) snowmobiles subject to registration or reregistration under Title 23, chapter 2, part 6; and
- (d) off-highway vehicles subject to registration or reregistration under Title 23, chapter 2, part 8.

(2) The fee must be collected by the county treasurer and forwarded to the state treasurer for deposit in the county motor vehicle computer fund established in [section 12 of HB 579] and the court automation account established in [section 2] as follows:

- (a) In FY 1992, 75 cents is allocated to the county motor vehicle computer fund and 25 cents to the court automation account;
- (b) In FY 1993, 50 cents is allocated to the county motor vehicle computer fund and 50 cents is allocated to the court automation account; and
- (c) thereafter \$1 to the court automation account.

(2) If House Bill 579 is passed and approved, section 11 of House Bill 579 is void.

(3) If House Bill 579 is passed and approved, section 5 of this act is void.

(4) If House bill 579 is passed and approved, section 6 of this act is replaced with the following:

NEW SECTION. **Section 6. Appropriation.** There are appropriated to the supreme court from the court automation account in the state special revenue fund the following amounts for court automation:

FY 1992	\$ 230,000
FY 1993	\$ 459,000"

