

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
January 19, 1977

The meeting of this committee was called to order by Senator Turnage in room 404 of the State Capitol Building at 9:30 a.m. for the purpose of hearing Senate Bill 67.

ROLL CALL:

All members of the committee were present for this hearing.

CONSIDERATION OF SENATEBILL 67:

Senator Towe, sponsor of S.B. 67, presented the bill, stating that it was an interim bill. He said that the biggest problem is the exchanging of computer information and that there are some errors made which actually abuse people in that they are on the computers and are not corrected. He further told those present that in somecases firms or agencies having computer data sell their lists of names to other companies. Senator Towe then proceeded to review S.B. 67.

Chairman Turnage then thanked Senator Towe for his presentation and asked if there were any proponents of S.B. 67 who wished to testify. Since there were none present, he called for the testimony of the opponents of the bill, beginning with Mr. Alexander K. Ciesielski, Assistant General Counsel, American Life Insurance Association.

Mr. Ciesielski told the committee that they were vitally interested in privacy and, also, in obtaining information in order to conduct their operations. He told the committee that in order to purchase life insurance, credit insurance, or borrow money, a person gives up his right of privacy. He further told them that the federal privacy act of 1974 is applicable only to government business and that there is no reference to private business in it. He then referred to a 127-page statement which he had presented to the interim committee which describes their procedures on how they write insurance, process claims, etc.. He suggested that it would be proper to wait for the study of the federal committee on matters dealing with medicine and insurance which is to be published later this year.

The next opponent of S.B. 67 was Mr. Thomas Waterman of Los Angeles who represented the Montana Retail Association and is generally employed by the J. C. Penney Company. Mr. Waterman presented the committee with two statements on S.B. 67. (See Exhibits 1 and 2)

Mr. John L. Peterson, representing the R. L. Polk & Co., and appearing as an opponent, told the committee of some of their problems with this bill and presented a written statement. (See Exhibit 3)

The next opponent to speak was Mr. John T. Cadby, Executive Vice President, Montana Bankers Association. He suggested that S.B. 67 be amended to apply only to government organizations. Mr. Cadby submitted a written statement. (See Exhibit #4)

Mr. Doyle Saxby, Deputy Director, Montana Department of Administration, then spoke against S.B. 67. He told the committee to get around this bill there will probably be waivers on all application forms. Mr. Saxby presented the committee with a written statement. (See Exhibit #5)

Appearing next as an opponent was Paul C. Dunham, Director of Planning, Montana University System. Mr. Dunham presented the committee with the attached written statement. (See Exhibit 6)

John G. Thomas, Department of Institutions, said they had a problem on how they would administer the bill.

Nick Rotering, also from the Department of Institutions, said that he does not believe that S.B. 67 excludes law enforcement and that he feels this bill would be too hard to administer.

The next opponent was John Denny, President of McIntosh M.S.U., who presented a statement from Lou Lucky, Computer Technician, M. S.U. *(See Ex. #7)*

Robert Corcoran, counsel for the Montana Department of Revenue, told the committee that the department is specifically mentioned in some issues of 1974 and 1976 studies since they are the state taxing authority. He said also that the rules and regulations in S.B. 67 would force the Department of Revenue to make more rules and regulations. Further, he told the committee that the department has large law enforcement division which they would not want to be exempt from that provision of the bill, and that in regard to the Social Security information, all of the federal agencies' regulations and statutes are very restrictive on the department and would cause them much more trouble to do.

Ron Semple, representing the Montana Press Association, and publisher of the Independent Record, said they oppose S.B. 67 because of the people's right-to-know. This bill would make it far more difficult for the press to do its job of informing the people.

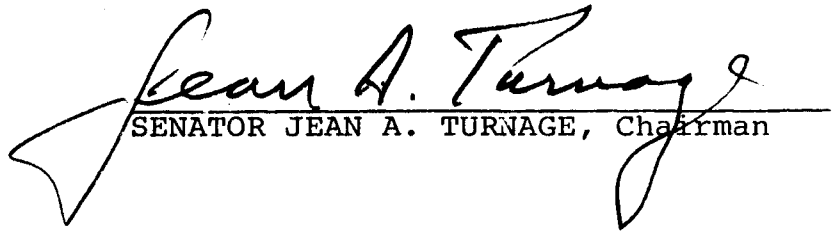
Glen Drake, former Senator and an attorney representing the Montana League of Cities and Towns, said they oppose S.B. 67 because of the cost factor.

At this time, Chairman Turnage allowed Senator Towe to close on S.B. 67. Senator Towe told the committee that he thinks that the comments made here show there is a problem. He agreed that it will cost more money, and that there will of necessity have to be

exceptions.

The Chairman then thanked all those present for coming to the meeting and advised them that the record would be kept open for one week for anyone wishing to file a written statement on Senate Bill 67.

There being no further business, the committee adjourned at 11:00 a.m. to reconvene at 9:30 a.m. on Thursday, January 20, 1977, in Room 442.


SENATOR JEAN A. TURNAGE, Chairman

ROLL CALL

JUDICIARY COMMITTEE

45th LEGISLATIVE SESSION - - 1977

Date 1-19-77

[illegible]

NAME: JOHN CADBY DATE: 1/19/77

ADDRESS: 706 HARRISON, HELENA

PHONE: 443-4121

REPRESENTING WHOM? NONT BANKERS ASSOC.

APPEARING ON WHICH PROPOSAL: SB 67

DO YOU: SUPPORT? _____ AMEND? X OPPOSE? _____

COMMENTS: APPLY TO PUBLIC SECTOR
OR GOVERNMENTAL ENTITIES ONLY

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

DATE 1-17-77

COMMITTEE ON Judiciary

BILL NO. 52

VISITOR'S REGISTER

NAME	REPRESENTING	Check One	
		Support	Oppose
Nancy Dunkle	myself (interview)	?	?
Ann Berry	mt. Conference 5017	—	—
Greg Saby		—	—
Joanne McCumber		—	—
Janice Saitz		—	—
Maim Butler			
John E. Cuddy	MT. Bankers Assn		SB 67
Thomas Wickman	MT. Credit Assn.		SB 67
James Sample	Montana Press Assn.		SB 67
John H. Noble, II	Montana Dakota Utilities Co		SB 67
John Drake	General Telephone of the Northwest, Inc.		SB 67
" "	Asia Cities & Town		SB 67
" "	American Ins. Ass'n		?
Beno Phillips	Pacific Power & Light		SB 67
Jim Hughes	Conrad National Bank		SB 67
Phil Stroppe	MTN Bell		SB 67
Harold Paulsen	Mont Life Underwriters Ass		SB 67
Alexander K. Olesinski	American Community Life Ins		SB 67
MORRIS NYQUIST	" " " "		SB 67
Joe H. Irwin	NYQUIST FINANCIAL SERVICES		SB 67
" "	Western Credit Co		SB 67
Karen Morse	MT. Comm. Finance Assn		SB 67
Sharon M. Van Tugel	Tenneco		SB 67
Nick Rotering	DEPT OF INSTITUTION		SB 67
John A. Peterson	R. L. Polk		SB 67
John G. Thomas	Dep Inst		SB 67
Mike Trevor	Dept. of Hwys. Data Processing Bur.		SB 67

(Please leave prepared statement with Secretary)

MONTANA RETAIL ASSOCIATION

January, 1977

A BRIEF CRITIQUE OF THE PROVISIONS OF SB 67

This paper is not designed to reach all the problems with SB 67. It will, however, touch upon some.

The definitional section of SB 67 is inadequate to provide guidance as to the meaning of terms subsequently utilized in the Act. For example, Section 3(8) of the bill uses terms such as "accuracy," "pertinence," "timeliness" and "completeness." These terms, taken in the statutory framework, are unreasonably broad and general. They offer no direction to an organization as to how to maintain information in a form which would comply with such language -- an organization would be unable to determine what responsibilities and duties it had to satisfy. For example, what is "accurate?" Who determines it? Is the same standard of "accuracy" applied for all purposes? Does "accuracy" place an obligation on an organization to go beyond what is in its files and require the organization to undertake an independent verification procedure?

MONTANA RETAIL ASSOCIATION

January, 1977

INAPPROPRIATENESS OF PRIVACY LEGISLATION
REGULATING THE PRIVATE SECTOR

These comments are directed to SB 67.

The Montana Retail Association represents the interests of all Montana general merchandise retailers. The ultimate goal and virtually all efforts of general merchandise retailers are directed at the distribution and sale of merchandise and related services. To facilitate the sale of their merchandise, retailers engage in numerous activities, many of which involve the development, maintenance and use of personal information.

Nationwide, in order for retailers to provide the ancillary services entailed in operating in excess of 30,000 retail outlets, they annually pay more than 2,000,000 people and issue over 20,000,000 pay checks; they also annually process billions of dollars in purchases, as well as billions

MOTOR VEHICLE REGISTRATION INFORMATION;
ITS IMPORTANCE TO THE NATIONAL, STATE AND
LOCAL ECONOMY AND AUTO SAFETY PROGRAMS

The sale to R. L. Polk & Co. of motor vehicle registration information produces the following benefits:

1. Provides the most factual statistical marketing data available on motor vehicles to the automotive, petroleum, tire, related industries, and local businesses.
2. Provides a means of notifying owners of motor vehicles believed to be defective under safety recall programs.
3. Is an effective aid to state and local police in law enforcement.
4. Provides accurate and current data for federal, state and local agencies engaged in environmental protection, highway safety and transportation studies.
5. Is a source of revenue for state governments.
6. Makes available marketing services, including selective direct mail advertising, for the automotive industry and others.

PRELIMINARY STATEMENT

R. L. Polk & Co. publishes city and bank directories, compiles motor vehicle statistics and engages in various marketing services, including direct mail advertising. Polk employs over 8000 persons and has its home office in Detroit, Michigan. For over fifty years Polk has obtained the information pertaining to all auto and truck registrations from every state and the District of Columbia. Polk converts and processes this information into a form for use in statistical reports to industry, for use by auto and truck manufacturers seeking to notify owners by mail of vehicles believed to have safety-related defects, for automotive and other direct marketing services, for use by law enforcement agencies tracing stolen cars or those involved in a crime, and for use by governmental planning and regulatory agencies.

Exhibit #4

TESTIMONY OF JOHN T. CADBY, EXECUTIVE VICE PRESIDENT, MONTANA BANKERS ASSOCIATION,
ON SENATE BILL 67 BEFORE THE SENATE JUDICIARY COMMITTEE ON JANUARY 19, 1977

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

Senate Bill 67 creates innumerable problems for all Montana banks.

On page 6, Subsection 7 requires banks to record all inquiries made on the system. This provision does not allow for the thousands and thousands of phone inquiries received each week from merchants wishing to verify the negotiability of checks. Every day banks receive calls from local merchants wanting to know if a check received in payment for merchandise is good and will clear the bank. To maintain a record of each and every phone call would be an administrative nightmare and extremely expensive.

The same provision does not allow for examinations conducted by state and federal regulatory agencies. Does this provision require us to maintain a record of every examination and of each account examined? If so, again we have a burdensome administrative problem.

Finally the same provision does not allow for abuses by the customer. A customer could call for a printout on his overdraft record, loan delinquency, bank balance or other data every week. Some limitations on the customer's accessibility or allowance to impose a fee to offset these administrative expenses should be provided in this section.

On page 8, Subsection 11 appears to require disclosure of statistical reports or research findings compiled by a bank. Our concern is the dissemination of privately conducted marketing surveys to competing banks and other financial institutions. There does not appear to be any provision for the proprietary rights to such studies or surveys.

On page 15, Section 5 prohibits the use of social security numbers. By federal law banks must secure the social security number on all time deposits so as to report earnings on those deposits to the IRS. Furthermore they are

NOTES ON SENATE BILL NO. 67
SECURITY AND PRIVACY
January 12, 1977

This request for a fiscal note can be viewed in two respects:

- o As the legislation will affect the Department of Administration.
- o As the legislation will affect the state of Montana.

In either case, an estimate of the possible fiscal requirements with the passage of this legislation is impossible to determine in this time frame (24 hours). In fact, the effect on the Department of Administration could not be accurately determined without several weeks of study.

An attempt has been made to provide an indication of the fiscal effect which can be expected by the passage of this legislation. Four categories have been established so that some comparison can be made as to the effect of individual sections.

- o Nil - Inconsequential resources required.
- o Minor -
- o Moderate -
- o Major - Will require considerable resources continuously.

The fiscal effect will be dependent upon the particular personal data system and can vary greatly, but for the purpose of this comparison, the effect has been generalized over all of State government.

<u>Section</u>	<u>DESCRIPTION</u>	<u>Fiscal Effect</u>
3-1	Limit transfer of personal data to an automated personal data system	Nil
3-2	Personnel and organizational requirements for safeguard compliance	Moderate
3-3	Establish rules and procedures for an Affirmative Action Plan for compliance	Minor
3-4	Establish a system of penalties for illegal disciplinary action	Minor
3-5	Provide reasonable precautions to assure the security of personal data systems	Minor
3-6	Equivalent safeguards must be assured before any transfer of personal data	Minor
3-7	Record and maintain a record of every access to personal data which is not routine	Moderate

STATEMENT OF PAUL C. DUNHAM, DIRECTOR OF PLANNING
MONTANA UNIVERSITY SYSTEM
Concerning SB No. 67
Establishing Safeguards for Operation of
Computer-Accessible Automated Personal Data Systems

Before Senate Judiciary Committee
January 19, 1977

The intent of the legislation is fine and in many respects it merely makes explicit what we try to accomplish when computers are utilized in the university system. I would like to comment very briefly upon a few technicalities and make one or two general comments at the end.

1. Section 2 (4) (page 2) defines "governmental organization" while Section 2 (5) (page 2) defines "organization". Both definitions include government, I believe, and while I cannot find any place in the bill in which the two definitions would cause problems, nevertheless, it is redundant, I think.

2. Section 3 (7) (page 6) requires the maintenance of a complete and accurate record of every access, excepting routine housekeeping functions. I think this will require a substantial amount of paperwork or establishment of computerized audit trails and one must ask whether the results are worth the effort. The last portion of this same section contains language which is confusing beginning with line 2: "...such as granting personal data to someone the individual to whom the data relates would relate would not expect to receive it..." What does the term "the individual" mean here?

3. Section 3 (11) (page 8) requires that a personal data which is the basis for statistical reports must be able to be publicly available for independent analysis but it is not clear by whom. For instance, we provide approximately 10 different salary analyses each year. Does this then mean that the effort which we make to insure that any one individual's salary does not become general public knowledge will be ineffective and we can expect to

Exhibit #7

January 18, 1976

Memorandum to: John Denny, Pres. McIntosh M.S.U.
From: LOU Lucky, Computer Technician M.S.U.
Subject LC 0106-01, SB67

The intent of the bill is meritable, but as I have indicated to Senator Towe many times, I fail to see why an individuals privacy is endangered and should be protected by law only if the records are kept on a computer or in computer accessible form.

Should the bill be passed, MSU would have to appoint or hire a "privacy and security" officer. Such a position is customarily part of the "data manager" responsibilities in many organizations. MSU does not have a data manager nor any counterpart at present. The individuals may have to be bonded.

The law will mandate what is now considered to be good systems practices; i.e., full update capability by record or field within record for addition, change and deletion with automatic generation of acceptable audit trails. It will also necessitate a modification to many files to allow marking records or portions of records that may be in dispute. Such modifications may range from trivial to very difficult to accomplish; hence may range from economical to quite expensive to implement.

* As Dictated to Sen. Towe on January 18th, to be presented
Before Sen. Judiciary Committee on January 19th.....