

MINUTES OF MEETING  
SENATE JUDICIARY COMMITTEE  
February 8, 1977

The meeting of this committee was called to order at 9:35 a.m. on the above date in Room 415 of the State Capitol Building by Senator Turnage, Chairman.

ROLL CALL:

All members of the committee were present for this meeting.

WITNESSES PRESENT TO TESTIFY:

Senator Rasmussen - District 16  
Senator Thomas - District 20  
John Cadby - Montana Bankers Assn.  
John Johnson - Federal Reserve Bank  
Daniel Dykstra - Northwestern Union Trust Co.  
Tom Campbell - 1st Trust Co. of Montana  
Tom Honzel - County Attorneys  
Jack Lynch - Executive Secretary, Montana Parole Board

CONSIDERATION OF SENATE BILL 301:

Senator Rasmussen, sponsor of S.B. 301, explained the bill to the committee. He then introduced John Johnson, representing the Federal Reserve Bank who spoke in support of the bill. He presented the committee with a memorandum in support of S.B. 301. (See Exhibit 1)

The next proponent of the bill to testify was Dan Dykstra of the Northwestern Union Trust Co. of Helena, who told the committee that this will give the same deal for registered local savings as banks have for regular bank accounts.

John Cadby, representing the Montana Bankers Association, was the next proponent of S.B. 301 to testify. He said that he just wanted to reiterate what the previous witnesses had said, and that all banks in the state are in support of this bill.

The next proponent was John Campbell, representing the 1st Trust Co. of Montana, who told the committee that this bill will make it easier to accomplish these transactions.

At this time, the Chairman called for opponents to testify. Since there were no opponents present, he allowed committee members to question the witnesses. Senator Turnage asked if they would agree to the committee striking everything after the enacting clause and simply state "A certificate or other evidence of obligation is not necessary." The witnesses agreed to this suggestion.

At this time the Chairman thanked the witnesses and closed the hearing on S.B. 301.

CONSIDERATION OF SENATE BILL 278:

Senator Thomas, sponsor of this bill, explained the bill to the committee, saying this act would raise the sentence for the first, second, third and fourth offenses. By doing this, they hope to lessen the number of crimes as this should act as a deterrent.

Jack Lynch, Exec. Secy. of the Parole Board, spoke as a proponent of this bill. He said they were in concurrence with S.B. 278 and preferred that bill to S.B. 210 because it carries a minimum penalty for the first offense.

Tom Honzel, representing the County Attorneys, was the next proponent to testify. He said they support both S.B. 278 and S.B. 210, and that they have for many years supported imposing these penalties. He told the committee that burglary is a feared crime and is included in S.B. 278, and that they prefer S.B. 278, although they are happy to support both bills.

There were no opponents present at this meeting. Therefore, the Chairman opened the meeting to questions of the witnesses by committee members. During the questioning it was brought out that aggravated burglary should be included in this bill. Jack Lynch asked that it be included in S.B. 278, and he also said that one crime that is in Senator Towe's bill (S.B. 210) and not in S.B. 278 is sexual offense.

At this time, the Chairman assured the proponents of S.B. 278 that it would be considered and thanked them for testifying.

CONSIDERATION OF SENATE BILL 210:

Senator Towe, sponsor of this bill, explained that it was a different approach to the problem than S.B. 278, but that it has some of the same effects. He then explained the bill itself to the committee and submitted a sheet listing offenses, current penalties and increased penalties under S.B. 210. (See Exhibit 1)

Tom Honzel, representing the County Attorneys, supported the concept of this bill and said that this is a good approach. However, he said that there are a few things that they like better about S.B. 278, but they do also fully support S.B. 210.

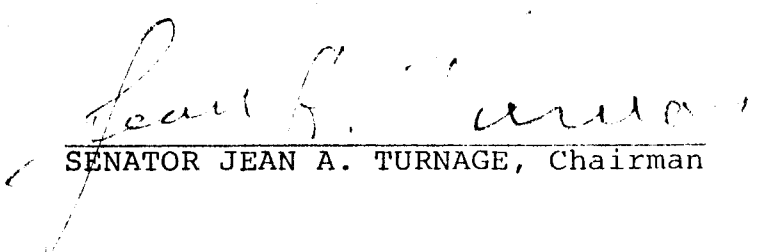
Representative Polly Holmes, District 67, advised the committee that they have some sentencing bills in the House. She requested the committee to consider these bills together with S.B. 210 and S.B. 278. She also said that there is a House Resolution this committee will be receiving which sets up a Criminal Justice Commission and one of the areas in it will be sentencing.

Richard Vandiver, Asst. Professor of Sociology at the University of Montana, said that this bill is an attempt to symbolically make an issue out of sentencing and that does not work because you must have deterrents. He further said that our criminal justice system

does not provide this. He, thus, spoke in opposition to S.B. 210.

At this time, the Chairman allowed the committee members to question witnesses.

There being no further business, the committee adjourned at 10:50 a.m.

  
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SENATOR JEAN A. TURNAGE, Chairman

## JUDICIARY COMMITTEE

Date 11/1/77

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SB 301

(21)

MEMORANDUM  
IN SUPPORT OF A BILL

TO PERMIT EXPANDED OWNERSHIP OF CLEARING CORPORATIONS, TO AUTHORIZE THE DEPOSIT AND TRANSFER BY BOOK ENTRY OF INVESTMENT SECURITIES IN CLEARING CORPORATIONS, AND TO AUTHORIZE THE DEPOSIT AND TRANSFER BY BOOK ENTRY OF U. S. TREASURY AND U. S. AGENCY SECURITIES IN FEDERAL RESERVE BANKS.

A bill is proposed which in several respects would amend Montana law governing the holding and transferring of investment securities.

Background

Certificates for stock and other investment securities historically have been subject to repeated handling in the course of sale, pledge and other transactions which occur daily in large volume as part of the business of the nation's stock exchanges and other financial institutions. In order to facilitate such transactions, negotiable securities are frequently made payable to bearer, so that, like a personal check made out to cash or to bearer, they become subject to theft or mysterious disappearance. Book entry transfer of securities is a method of simultaneously facilitating the large volume of legitimate daily transfers of securities and eliminating the risk inherent in the circulation of securities in bearer form. Under the book entry method, the underlying securities are "immobilized" in the sense that there is no engraved certificate or other written instrument which embodies the owner's investment. Instead, the investment is evidenced by an entry on the books

of a responsible record-keeping institution, and transfer of ownership of the investment is accomplished by making appropriate entries in those record books.

Due to practical necessity engendered by the large volume of transactions occurring daily on the nation's stock exchanges, the organizations responsible for clearing these transactions (known as "clearing corporations") have been authorized for a number of years by Section 8-320 of the Uniform Commercial Code (the "UCC"), as adopted in forty-nine states and the District of Columbia, to accomplish the transfer of ownership and pledge of securities by means of book entries. The proposed bill contains several logical extensions of the book entry procedure that have been enacted into law recently by a number of states. The purpose of these provisions is to further facilitate the immobilization of investment securities and thereby avoid the risk inherent in their circulation in bearer form.

#### Proposed R.C.M. Section 5-1601

Increasingly, improvements in the facilities and procedures of clearing corporations such as The Depository Trust Company have made it feasible for banks and other financial institutions to deposit investment securities with such clearing corporations for safe keeping.

Many states, however, have laws which expressly prevent a fiduciary or custodian for a fiduciary from commingling

trust property with its own property. Similarly, some states have laws forbidding the commingling of the property of different trusts by a fiduciary or custodian for a fiduciary, and some states have laws that require a bank fiduciary or custodian for a fiduciary to retain physical possession or control of trust property. Banks in states whose laws have provisions such as these may refrain from availing themselves of the safety and efficiency of the book-entry procedure of clearing corporations for their trust securities, even though they are willing and able to use such facilities for their own securities and for securities they hold for non-fiduciary customers. Even in states whose laws contain no such express prohibitions, banks may be uncertain as to the extent of their common law powers.

The proposed Section 5-1601 would resolve such doubts by expressly authorizing any fiduciary, any bank or trust company holding securities as a custodian or managing agent, and any bank or trust company holding securities as custodian for a fiduciary, to deposit those securities with a clearing corporation and thereby take advantage of the book entry method of holding and transferring securities. The various provisions of the proposed Section 5-1601 are intended to provide clearing corporations, fiduciaries, banks and trust companies with necessary flexibility, and to erect safeguards to ensure accountability to anyone with a legitimate interest in the securities so deposited.

Amendments to Sections 87A-8-102(3) and 87A-8-320

Section 8-102(3) of the UCC sets forth the definition of a "clearing corporation" for purposes of both Article 8 of the UCC and the proposed Section 5-1601. As initially adopted in all states, Section 8-102(3) defined a "clearing corporation" as a corporation, all of the capital stock of which is owned by a national securities exchange or association. In 1971, however, the New York Stock Exchange and the other members of the Banking and Securities Industry Committee launched a campaign to amend the definition of "clearing corporation" to permit expanded ownership of the stock of what is now The Depository Trust Company, one of the foremost clearing organizations and security depositories in the nation. Such expanded ownership is intended to give financial institutions representation in the management and control of The Depository Trust Company, thereby encouraging the deposit of securities and increased use of the book entry method of holding and transferring securities. To date, at least 38 states have enacted the amendment to Section 8-102(3) now being proposed for adoption in Montana.

The proposed addition of a subsection (6) to Section 8-320 of the UCC is intended to insure that the issuer will have the right to adequate information concerning the ownership and transfer of its securities even though physical evidence of the securities has been immobilized and the securities are held and transferred by means of the book entry method. This amendment to Section 8-320 is substantially the same as an amendment



recently enacted in the State of Minnesota.

Proposed R.C.M. Section 5-1602

The proposed R.C.M. Section 5-1602 would authorize fiduciaries, banks and trust companies to take advantage of regulations issued by the Federal Reserve System and the United States Treasury Department permitting the deposit and book entry of Treasury and certain other U.S. agency securities with each Federal Reserve Bank. The Treasury Department has had regulations authorizing the book entry procedure since 1968.

Although proposed R.C.M. Section 5-1602 thus covers a different type of depository, it is based on the same underlying considerations of state trust and fiduciary law, and has the same broad purposes as proposed R.C.M. Section 5-1601.

Proposed Section 5-1602 by its terms applies to any bank or trust company acting as fiduciary, whether chartered by federal or state government. Although only members of the Federal Reserve System are permitted under the rules of the Federal Reserve System to make such deposits directly, the bill further contemplates that any bank holding securities as custodian for a fiduciary may deposit such securities with the Federal Reserve Bank. Accordingly, any bank may obtain the benefits of this bill by using established custodianship arrangements with a bank which is a member of the Federal Reserve System.

A statute substantially similar to proposed Section 5-1602 was enacted in 1971 in the state of New York. Similar statutes have been enacted in at least nine other states

(Delaware, Virginia, Minnesota, Missouri, Kansas, Maine, Massachusetts, Tennessee and California). It is understood that within the near future, most, if not all, U. S. government bills and notes will be offered only on a book entry basis through the Federal Reserve Banks.

(4.1)

SB. 210

<u>OFFENSE</u>	<u>CURRENT PENALTIES</u>	<u>INCREASED PENALTIES UNDER SB 210</u>
DELIBERATE HOMICIDE	DEATH or 100 YEARS	DEATH or 110 YEARS
MITIGATED DELIBERATE HOMICIDE	40 YEARS	50 YEARS
AGGRAVATED ASSAULT	20 YEARS	30 YEARS
KIDNAPPING	10 YEARS	20 YEARS
AGGRAVATED KIDNAPPING	DEATH or 100 YEARS	DEATH or 110 YEARS
*unless victim is voluntarily released, in a safe place, and not suffering from serious bodily injury	10 YEARS	20 YEARS
ROBBERY	40 YEARS	50 YEARS
SEXUAL INTERCOURSE WITHOUT CONSENT	20 YEARS	30 YEARS
*if victim is less than 16 years old and offender is 3 or more years older or if offender inflicts serious bodily injury upon anyone in commission of the offense	40 YEARS	50 YEARS
SEXUAL ASSAULT	FINED NOT TO EXCEED \$500 or IMPRISONED IN COUNTY JAIL NOT TO EXCEED 6 MONTHS	FINED NOT TO EXCEED \$500 or IMPRISONED NOT TO EXCEED 10 YEARS, 6 MONTHS
*if victim is less than 16 years old and offender is 3 or more years older or if offender inflicts serious bodily injury upon anyone in commission of the offense	20 YEARS	30 YEARS

COMMITTEE

DATE 2-8-77

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