

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 26, 1977

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

ROLL CALL:

All members of the committee were present for this meeting.

WITNESSES PRESENT TO TESTIFY:

Rep. Harrington - Butte
Jim Roberts - Joint Council of Teamsters, Local #23
Ernest Post - Montana State AFL-CIO
Greg Morgan - Montana Bar Assn.
Harry Maschera - Insurance Commissioner's office
Rep. Ramirez - Billings
Al Mayes - regional manager of Lawyers Title Insurance Corp., Denver
Phil Strobe - First Montana Title Co.
Gorham Swanberg - Montana Railroad Assn.
Neil Ugrin - Commonwealth Land Title Insurance Co., Great Falls
E. Bob Brown - Guarantee Title Co., Great Falls
Joan Knipfer - American Land Title Co., Bozeman
Joe Driscoll - Insurance Commissioner
Mike McGrath - Office of the Attorney General
Rep. Holmes - Billings
Russ Livergood - Montana Retail Clerks
Tom Dowling - Helena attorney

CONSIDERATION OF HOUSE BILL 761:

Rep. Harrington of Butte, sponsor of the bill, said that it provides for prepaid legal services because it is a plan which would allow people to pay monthly premiums for insurance for legal services when needed.

Don Robinson, an attorney in Butte, explained the bill to the committee for Rep. Harrington. He said that it will permit non-profit legal service corporations and regulate them. He read a prepared statement to the committee on this bill. (See Exhibit 1)

Jim Roberts of the Joint Council of Teamsters, Local #23, said that their local was the first in Montana to make this available to their members. Their main concern is that the Taft-Hartley Trust will be protected by this bill. He said they support HB 761.

Ernest Post of the Montana State AFL-CIO gave the committee some proposed amendments to HB 761. (See Exhibits 2, 3, 4, 5, 6, 7 and 7A)

Greg Morgan of the Montana Bar Assn. responded to the proposed

amendments and said that basically they have no objection to them, but that they feel that these amendments could be included in a plan already set out. He questioned what attorneys are going to serve the plan and was told that any attorney could. He said that the amendment to page 6, lines 17 through 19, would allow for a closed panel. They do oppose that amendment. He told the committee that the fiscal note is somewhat understated in his opinion, and he urged that the committee consider all the amendments favorably except the one to page 6, lines 17 through 19.

There were no opponents to the bill. During questioning by committee members, it was brought out that right now it is a group insurance regulated by the Insurance Commissioner and that it will cost about \$60 per person a year. However, Gerald Neeley who represents the Montana Medical Assn. said that that would probably later go down like group dental insurance has.

At this time Harry Maschera from the office of the Insurance Commissioner offered some statistics to the committee. He said that the health insurance companies do not pay a premium tax and this plan would be set up the same way. They only pay a 20 cent per member tax. The money will go into the general fund from which his office gets their money to operate and they are not properly staffed, in fact they would require an attorney on their staff so that people could receive the proper legal services. Although the health insurance companies, such as Blue Shield, have over 1,000,000 members and pay 20 cents per member to the state, it does not cover their expenses for the office. They worked very closely with the Budget Director on the fiscal note for this bill and guessed at the number to be covered. The funding was based on sophisticated methods.

Don Robinson of Butte told the committee that it will be up to the various insurance plans to prescribe their legal services and say if there are exclusions.

The Insurance Commission is to provide the committee with a history of legal services insurance in the other states which have it.

CONSIDERATION OF HOUSE BILL 713:

Rep. Ramirez of Billings, sponsor of the bill, said that this bill deals with marketable titles and that it is to eliminate defects and regulate irregularities. If anyone has an interest more than 30 years in property, they can file a Notice of Interest and continue to file that Notice every 30 years. The statute excepts quite a number of things from this act. He then went over the exceptions listed on page 22 for the committee. He said further that this bill is designed to eliminate the technical defects in court. This is a model act and has been adopted by 15 or 16 other states, including North and South Dakota.

Greg Morgan of the Montana Bar Assn., a proponent of the bill, said that they support HB 713.

Jim Lucas, a Miles City attorney, had planned to attend this hearing as a proponent but, since he was unable to, he submitted a letter in support of HB 713. (See Exhibit 8)

Phil Strobe, a Helena attorney representing the First Montana Title Co., gave the committee a copy of his prepared remarks and proposed amendment in support of HB 713. (See Exhibits 9 and 10, respectively) He introduced the following people who were here in support of the bill with his amendment:

Paul McCann - Montana Title Insurance, Great Falls
Robert Rolfson - First Montana Title, Missoula
Pat F. Gowen - Helena Abstract & Title Co., Helena
E. Bob Brown - First Montana Title Co. of Bozeman, Bozeman
Mike Neely - First Montana Title Co., Helena

Gorham E. Swanberg, representing the Montana Railroad Assn., was the next proponent. He also presented amendments for consideration by the committee. (See Exhibit 11) He explained them and urged concurrence in the bill with his amendments. Rep. Ramirez said that the amendments proposed by Swanberg are fine, but he is absolutely opposed to the amendment of Phil Strobe.

Neil Ugrin, representing the Commonwealth Land Title Insurance Co. of Great Falls, said that they support the bill but oppose the amendment of Phil Strobe. He said that, if you just listen to Mr. Strobe, you would think that the amendment was just thought up yesterday, but that is not the case. HB 413 was killed in the House and now it is being tagged in here. The whole point of this amendment is to create a monopoly by Mr. Strobe's clients and other title companies in the state. There are basically two types of title insurance groups, namely, abstractors who have gone into the title insurance and lawyers who write abstracts. The purpose of this bill is to put persons out of business -- people who are lawyers and are qualified to assist the public in writing abstracts. The question is can the abstractors write better title insurance. The abstractors are worried about competition. This is not a consumer's bill. It is for the specific protection of a small group. The Supreme Court in 1975 said that you cannot discriminate against lawyers who are helping people write abstracts. That is not Strobe's definition of that decision. Lawyers are regulated along with abstractors. The amendment proposed by Mr. Strobe is the fourth or fifth attempt that has been made this session to obtain this monopoly. If they cannot prove the consuming public is better served by just their group, it is an abstractor's relief bill. He urged that the committee concur in HB 713 with Swanberg's amendments and not the amendment of Mr. Strobe.

Greg Morgan, representing the Montana Bar Assn., said that they oppose the amendment of Strobe as they think title insurance can be written by any lawyer based upon a review of an abstract. They support the bill with the Swanberg amendments.

E. Bob Brown, a Great Falls attorney who is owner of the Guarantee Title Co. there, said that he is not an abstractor but has been writing title insurance for the last 20 years. He supported the bill

and the amendments of Swanberg.

Joan Knipfer of the American Land Title Co. in Bozeman said that she writes title insurance and opposes Strobe's amendment because it defeats the purpose of this bill.

Rep. Ramirez, in closing, said that when this bill was originally heard in the House there was nobody at the hearing. However, after the amendment was proposed, there was a lot of interest. He told the committee that he does not like the amendment as it is for a specific interest, and that he would rather see the bill killed than have the Strobe amendment put in the bill. He will fight this in the House if it is accepted here. He also said that he resents the attack on the ethics of the Montana Bar Assn. and attorneys which was made by Mr. Strobe in his concluding remarks as that was going beyond the scope of a proponent of a bill.

After some questioning by committee members, the hearing on HB 713 was closed.

CONSIDERATION OF HOUSE BILL 787:

Joe Driscoll, Insurance Commissioner, said that this bill was introduced at the request of the Attorney General because the last session required the Attorney General to dissolve corporations which have not fulfilled their obligations. This bill would assist in the dissolution of corporations by having them done through the office of the Secretary of State.

A proponent of the bill, Mike McGrath of the office of the Attorney General, said that when they got into office they found that one of the things the Attorney General was required to do was bring an action in district court to dissolve corporations which have not fulfilled their obligations. He explained that this bill would give that duty to the Secretary of State and recommended that page 6, line 7, be amended regarding the reinstatement of a corporation which has been dissolved. He asked that the committee delete the word "original" because that could change the amount of the fee.

Some of the staff of the Secretary of State's office was present to answer questions.

CONSIDERATION OF HOUSE BILL 800:

Rep. Holmes of Billings, sponsor of the bill, was not here. Small claim procedures in justice courts are dealt with in this bill. Winn Dowlin, an attorney and justice of the peace in Yellowstone County, explained the bill to the committee for Rep. Holmes who had been detained in another committee hearing. He was one of the drafters of this bill which really originated because of circumstances in Yellowstone County. When Rep. Holmes arrived, she apologized for being late and gave some forms to the committee for their information (See Exhibit 12) and asked if they wanted to question the "de novo" inference on page 7. She suggested an amendment to page 8, line 20, to change the "." to a "," and add "an evening session is available at least once a month."

Senator Olson proposed an amendment to raise the jurisdictional levy to \$1,500 from \$500. (See Exhib #13)

Russ Livergood, representing the Montana Retail Clerks, read a prepared statement (See Exhibit 14) in opposition to HB 800 and asked that HB 800 be not concurred in by this committee.

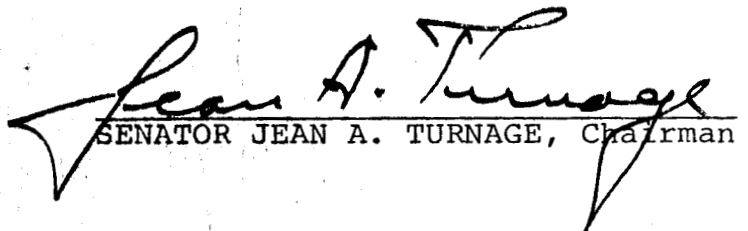
Greg Morgan of the Montana Bar Assn., said that his concern is about the judge who sits at a trial whether he be an attorney or that the trial de novo be subject to appeal.

Tom Dowling, a Helena attorney, responded to the above statement by saying that it starts out as a small claims court for individuals. Retail should not be taking over the court. Trial de novo is a waste of one court's time. Either the judge at the trial is wasting his time or the district court is wasting its time. This bill would not tie up the district court with a trial. He submitted a letter which had been received from Wyoming on this subject. (See Exhibit #15)

At this time Rep. Holmes said that the reason for the \$500 is because they did not want to make it too high for the little people. If it is too high, the courts would be flooded with collections. She asked that the committee do not put it as high as \$1,500.

After questions by committee members, the hearing on HB 800 was closed.

There being no further business before the committee at this time, the committee adjourned at 11:35 a.m..


SENATOR JEAN A. TURNAGE, Chairman

JUDICIARY COMMITTEE

Date 3-26-77

[illegible]

(81)

STATEMENT OF DONALD C. ROBINSON, BUTTE, MONTANA

Before Senate Judiciary Committee, March 26, 1977.

In Support of HB 761 (An Act to permit the formation of nonprofit corporations to provide prepaid legal services and to regulate the activities of such corporations)

Ladies and Gentlemen of the Committee:

My name is Donald C. Robinson. I am an attorney in private practice in Butte, Montana. I am here to testify in support of HB 761, which is a bill created to permit the formation of nonprofit corporations to provide prepaid legal services, and to regulate the activities of such corporations. I have been keenly interested in prepaid legal services and have worked in the past several years to help develop a prepaid legal services concept in Montana, because of my strong feeling that the delivery of legal services to middle income persons is not being accomplished nearly as well as it should be, or could be, accomplished in Montana.

During the past ten years or so, the delivery of legal services to the poor and to the middle income segments of society has become the subject of intense scrutiny by members of the bar (both on the state and national level) as well as by representatives of these legally underserved groups. A substantial effort has been made by the Congress under various OEO programs to provide delivery of legal services to the very poor or indigent, both in criminal and civil proceedings. We are aware that indigent persons in Montana now have substantial access to legal services offices or public defender programs. Therefore it might be said,

(E 2)
Post
AMENDMENT

Amend House Bill No. 761, third reading copy, on page 1, lines 17 and 18 by striking the following language:

Currently an active member of the State Bar of Montana."

and inserting in lieu thereof the following language:

"Licensed to practice law in the State of Montana."

AMENDMENT

There is no definition of a retired member. The following definition might be used to extend benefits to such a person. In that case the following definition may be used:

"Retired member means a person entitled to the performance of legal services under a contract with a legal services corporation whose application is still pending."

(Ex 4)

Post

AMENDMENT

Amend House Bill No. 761, third reading copy, page 2, line 14 by inserting a new subparagraph (8) which reads as follows:

"Beneficiary" means any person with the following relationship to a particular member:

1. A spouse if not legally separated.
2. An unmarried child (including adopted, step-, and foster children) under eighteen (18) years of age who has the same residence as the member and is dependent upon the member for support and maintenance.
3. A widow, widower, or child of a deceased member (eligible at the time of death) for six (6) months after the member's death, except as to matters arising out of the member's death where the individual shall be considered dependents until the matters are concluded."

AMENDMENT

Amend House Bill No. 761, third reading copy, page 6, lines 17, 18 and 19 by striking the following language:

"Must offer the same contract terms to all attorneys who desire to become contracting attorneys."

and in lieu thereof inserting the following language:

"Shall set the terms under which it shall employ or contract attorneys."

AMENDMENT

Amending House Bill No. 761, third reading copy, page 22, after line 18, add a new section by adding the following language:

"Neither (section 10) or (section 11) shall be construed to apply to any organization not a legal services corporation organized under this act such as but not limited to labor unions, labor-management trust, trade associations, and insurance companies, but (section 10) and (section 11) shall be construed to apply only to legal services corporations organized under this act. Nor shall this section or (section 10) or (section 11) be construed to repeal or modify any law which now or may hereafter apply to organizations (including those mentioned in this section) which are not legal services corporations organized under this act or adversely affect any such organizations organized under any other law."

(447)

AMENDMENT

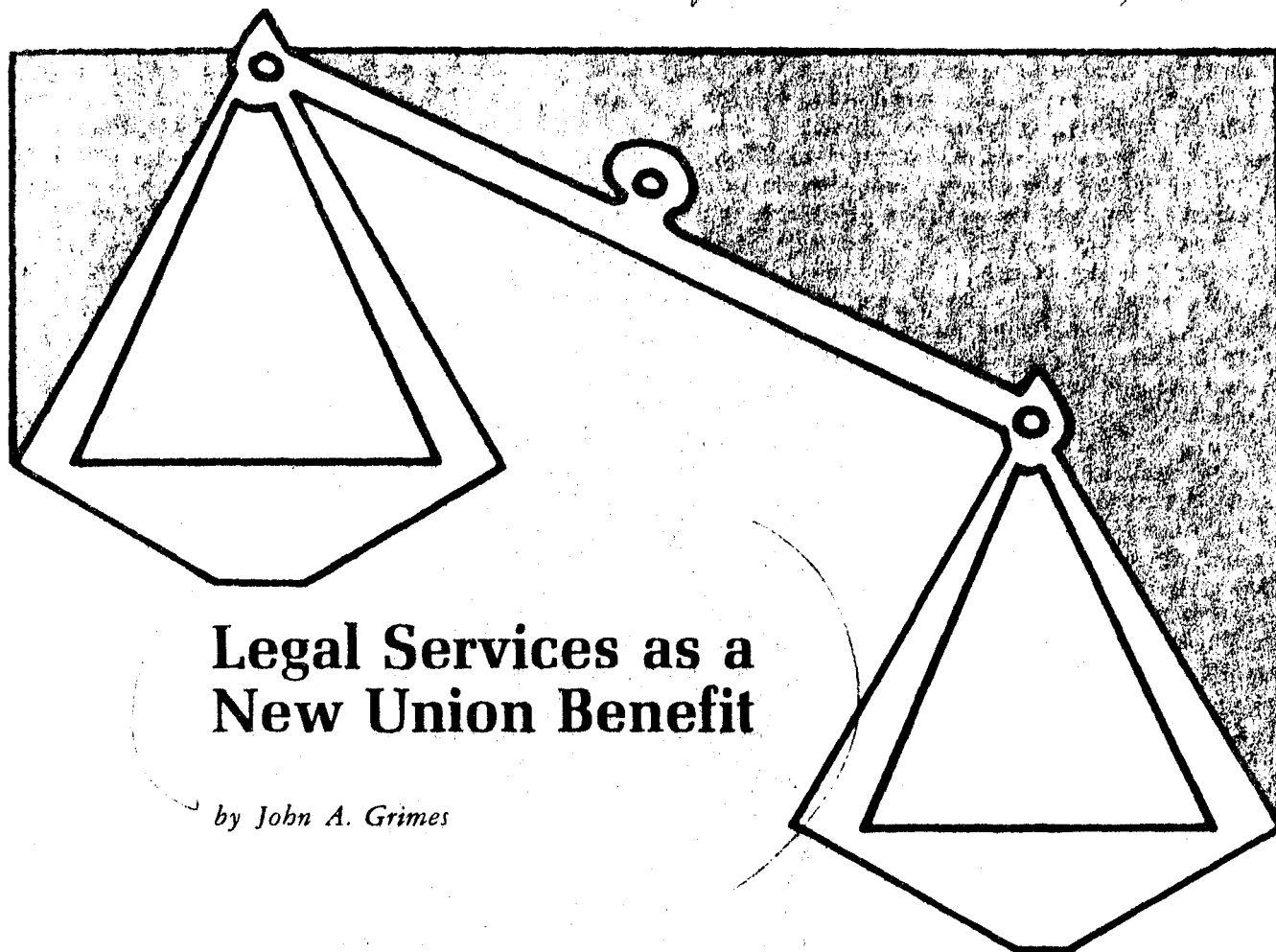
The fiscal note attached to House Bill No. 761 and dated February 19, 1977 contains some very important assumptions. The note assumes that a separate unit within the insurance department will be required, consisting of three (3) full-time employees. The note also assumes that twenty thousand (20,000) members would be in the plan in the fiscal year of 1978 and forty thousand (40,000) in the fiscal year 1979. It is not clear as to what facts were used upon which to make this assumption.

The note also indicates that additional revenues for the fiscal year would amount to Twelve Thousand One Hundred Fifty Dollars (\$12,150.00) and again it is not too clear if this figure is accurate. The total additional expenditures for the fiscal year would be Ninety Two Thousand Two Hundred Sixty Seven Dollars (\$92,267.00) and this figure I believe is concrete, based on employing three (3) new full-time employees, one being an attorney in a supervisory capacity.

The fiscal note indicates that the net cost of this piece of legislation for the fiscal year would be Eighty Thousand One Hundred Seventeen Dollars (\$80,117.00). As you know, the Legislature is very concerned about the voluminous number of legislation having a fiscal impact. This particular house bill will obviously have to be considered in terms of its priority status in the list of other legislation having a fiscal impact as well as in relationship to the other needs of Montana to which the Legislature is now addressing its energy.

Post

(E-7A)



Legal Services as a New Union Benefit

by John A. Grimes

Until his mule wandered out on a Louisiana road one night, Clevon Cain had never thought much about lawyers.

The trouble was, a truck hit Cain's mule—and he was faced with the possibility of paying a \$250 fine and going to jail for 30 days on charges of violating a law prohibiting livestock from roaming free.

But Cain, in addition to owning a mule, is a member of Laborers Local 229 in Shreveport, whose members are covered by a prepaid legal insurance plan. So he utilized the plan to seek legal advice about his problem.

The result: Shreveport lawyer Lewis Weinstein, a member of the city's bar association, which is cooperating with the union in the operation of the pilot plan, went to court and won dismissal of the charge on the grounds that the mule had appeared on the highway through "an act of God" rather than negligence on Cain's part, because lightning had knocked down the fence surrounding Cain's small farm. All fees were paid by the plan.

The local's legal program which came to the rescue of Cain is but one of many now fast cropping up, in different forms, among organizations the breadth of

the country, including cooperatives, student groups, church groups, homeowner associations and the like. But the trade union movement has been in the vanguard of the development of the program, one of the most promising group plans since group medical programs were started to help solve the health crisis of soaring costs and inadequate care.

One of the most recent plans, scheduled to go into effect in January 1972, is by the Chicago Joint Board of the Clothing Workers. It is paid for by voluntary payroll deductions to a supplementary insurance program formed previously to fill in the gaps in the medical and health insurance programs negotiated in ACWA contracts.

The Teamsters union has put a legal aid plan in operation for its members in Toledo. Teachers groups in Los Angeles and in Florida now have or soon will have such plans in operation; others in New York and Michigan have them under consideration, as do the Auto Workers and the Steelworkers. Active interest is being expressed by various locals of the Retail Clerks, the Chemical Workers, the Sheet Metal Workers, the Communications Workers and a host of others. Other organizations are either expressing interest in the plans or already have them in operation.

While the plans may differ in some detail, the principle behind them is simple: Group legal services are programs through which organized groups, such as

JOHN A. GRIMES, a former labor reporter for the Wall Street Journal, is a free-lance writer and contributor to various publications. He is the author of several previous Federationist articles.

LUCAS, JARDINE & MONAGHAN
ATTORNEYS AT LAW
213 MAIN STREET
MILES CITY, MONTANA
59501

(Ex. 8)

ES P. LUCAS
RLES W. JARDINE
MAS M. MONAGHAN

October 31, 1974

P. O. BOX 728
PHONE: 406-232-4070

TO: All Montana Attorneys

RE: Montana Marketable Title Act

Ladies and Gentlemen:

The Title Standards Committee of the Montana Bar Association has been working on the enclosed Marketable Title Act for Montana for the past year.

The ultimate purpose of the Act is to simplify land title transactions by making it possible to determine marketability by limited title searches over some reasonable period of the immediate past and thus avoid the necessity of examining the records in detail back into distant times for each new transaction.

The primary object in the Act for Montana is to clear land titles of certain defects that existed more than thirty (30) years ago. The proposed Act does contain certain exceptions as provided in Section 6. As a result, the Montana Act is primarily directed to cure tax title defects and technical defects that arise in old quiet titles, foreclosures, and probate proceedings. It seems that most title defects facing title examiners relate to these particular areas.

Many of the marketable title acts in other jurisdictions have been tested by Court action and they have been sustained.

In preparing this proposed Act we considered the basic model marketable title act that was enacted after two years of study by the State of Michigan. We also considered marketable title acts adopted by other jurisdictions. We feel the Act that we have proposed includes provisions that will best serve Montana.

We recognize that the proposed Act will not cure all defects and that it is not the complete answer; however, it is hoped that it will remove the basic defects that are encountered most frequently. If the owner of property has a marketable title for the past thirty (30) years and no one has filed a notice of claim, then the examiner does not have to concern himself with defects that took place beyond thirty (30) years. The Act should therefore not only make title examinations somewhat easier but should also remove the continual question of whether some technical ancient defect should be waived or raised.

After this Act is adopted, it will then become necessary for the Title Standards Committee to revise and up-date our Title Examination Standards. We hope to complete that project in 1975.

Respectfully submitted,

MONTANA BAR ASSOCIATION TITLE
STANDARDS COMMITTEE

By: *Charles W. Jardine*
Charles W. Jardine, Chairman
Miles City, Montana

Maurice A. Maffei
Butte, Montana

Wayne K. Cumming
Sidney, Montana

W. J. Carl
Butte, Montana

Kemp J. Wilson
Billings, Montana

Strope (679)

MEMORANDUM - House Bill 713

House Bill 713, known as the Montana Marketable Title Act of 1977, is desirable legislation and worthy of the support of Montana's abstract community. House Bill 713 will reduce the amount of work that is necessary to create a merchantable title in this state. It will eliminate, after a period of 30 years, the intangible claims against property in which the existence depends upon an act, transaction, event, or omission. Such claims will be cut off after 30 years unless they are reaffirmed in writing by the holder in the manner provided by Section 11(2). The provision for reaffirmation of such rights is reasonable.

House Bill 713 will bring into greater public focus and greater demand the knowledge and skill at analyzing records of title possessed by the licensed abstracters. For the buyer of property in which a sizable economic investment is made, it will be necessary for the licensed abstracter to indicate the claims or interests that must be satisfied and the claims or interests that have been cut off by the Montana Marketable Title Act of 1977 as set forth in House Bill 713. Only the licensed abstracter has the kind of plant and equipment that can provide this information to the Montana public as a buyer of property. Only the licensed abstracter maintains the facilities to gather on a regular basis the information filed of record in our county courthouses and, thereafter, make that information available to the purchasing public. The licensed abstracter's qualifications are provided for in 66-2211.

Throughout the history of the State of Montana, not unlike the history of other states within our union and the federal government itself, there have been times when a need arose for the legislature to set forth certain standards within professions doing work for the public and having set the standards, to compel all of those who hold themselves out within the professions to meet the standards. In the matter of abstracting and certifying as

HOUSE BILL 713

PROPOSED AMENDMENT (March 26, 1977)

1. Amend title, line 5

Following: "1977"

Insert: ";AND AMENDING SECTION 40-4601, R.C.M. 1947

2. Amend page 11

Following: line 18

Insert: "Section 16. Section 40-4601, R.C.M. 1947, is amended to read as follows:

"40-4601. Policy based upon title evidence. (1) No title insurance policy as to property in this state shall be issued by any insurer unless based upon evidence of the condition of title certified in writing as of the date of the policy by some a person, firm, or corporation holding a certificate of authority issued under section 66-2111, to engage in the title abstracting business in the county in which the property is located except, that this provision shall not apply as to title insurance policies issued upon the basis of an opinion of an attorney, duly authorized to practice law in this state, as to the condition of the title following a review by such attorney of the pertinent title records or abstracts, and issued through a licensed title insurance agent who was so licensed and was regularly processing title insurance policies issued upon the basis up to the effective date of this code.

(2) An insurer issuing any policy in violation of this section is estopped, as a matter of law, to deny the validity of the policy as to any claim or demand of the insured or assigns arising thereunder.

(3) The commissioner of insurance may make reasonable regulations necessary to effectuate the provisions of this section under the authority of 40-2710."

Amendments to House Bill 713.

Amend HB713, third reading, as follows:

1. Amend page 10, section 13, line 1.

Following: "lease"

Strike: ~~":~~

n, the lease

Insert: "or on the occurrence of the conditions which result in
in the reversion."

2. Amend page 10, section 13, line 13.

Following: "by "

Insert: "or created for"

3. Amend page 11, section 15, line 15.

Following: "15."

Strike: "Two-year"

Insert: "Five-year"

4. Amend page 11, section 15, line 17.

Following: "to"

Strike: "2"

Insert: "5"

5. Amend page 11, section 15, line 18.

Following: "for"

Strike: "2"

Insert: "5"

(Ex 11)
Guarantee

Holmes Ex 12

**SUPPLEMENTARY
INFORMATION
FOR A DEFENDANT
IN A SMALL CLAIM CASE**

**INFORMATION
FOR THE PLAINTIFF
IN SMALL CLAIMS CASES**



Case No. _____

Plaintiff

Colendared _____

VS

Indexed _____

Defendant

DECLARATION

STATE OF NEVADA, COUNTY OF WASHOE

I, the undersigned _____
(Name of Declarant or Plaintiff)

residing at _____, being first duly sworn,
declare that the defendant(s) is (are) indebted to the plaintiff in the sum of

\$ _____ for _____

that this declarant has demanded payment of said sum; that the defendant(s) refused to pay the same and no part thereof has been paid.

() that the obligation sued on was contracted to be performed in the above-named Reno Township

() that at the commencement of action defendant resides in the above-named Reno Township

I declare under penalty of perjury that the foregoing is true and correct.

Subscribed and Sworn to before me this

Date: _____

RENO, NEVADA

Plaintiff or Declarant

Clerk, Reno Justice Court

ORDER

THE PEOPLE OF THE STATE OF NEVADA, to the within-named defendant(s): You are hereby directed to appear and answer the within and foregoing claim, in the above entitled court at:

THE RENO JUSTICE'S COURT, ROOM 212, COURT HOUSE, RENO, NEVADA.

on _____, at _____ M. reset for _____, at _____ M.
reset for _____, at _____ M. reset for _____, at _____ M.
reset for _____, at _____ M. reset for _____, at _____ M.

and to have with you, then and there, all books, papers, and witnesses needed by you to establish your defense to said claim; and you are further notified that in case you do not appear, judgment will be given against you for the amount found by the court to be due upon said claim but not more than the amount stated in plaintiff's declaration, and in addition, costs of the action, including costs of service of the order.

Order dated and declaration and order

(SEAL)

filed on _____

Clerk

Date Reset _____

Date Reset _____

By _____ Deputy Clerk

DATE	PROCEEDINGS	RECEIPT NO	FEES
	DECLARATION FILED: FEES PAID		
	ORDER ISSUED		
	ORDER AND COPY OF DECLARATION: MAILED TO DEFENDANT(S) BY CERTIFIED MAIL		
	DELIVERED TO PLAINTIFF FOR PERSONAL SERVICE		

STAY _____ DAYS

PAYABLE

(Ex 13) 2. 11. 1964

STANDING COMMITTEE REPORT

Mr. President,

We, your Committee on Judiciary, having had under consideration House Bill No. 800 entitled "AN ACT TO ESTABLISH SMALL CLAIMS PROCEDURES FOR JUSTICES" COURTS IN THE STATE OF MONTANA," respectfully report as follows: That House Bill No. 800, third reading copy, be amended as follows:

1. Amend page 1, Section 3, line 22

Strike: the figures "500"

Insert: the figures "1,500"

(EX 14)



GRANITE BLOCK • P. O. BOX 440 • HELENA, MONTANA 59601
SERVING THE TOTAL INTERESTS OF MONTANA RETAILERS

AREA CODE 406
442-3388

HOUSE BILL NO. 800

"AN ACT TO ESTABLISH SMALL CLAIMS PROCEDURES
FOR JUSTICES' COURTS IN THE STATE OF MONTANA."

Testimony Before the Senate Judiciary Committee

Mr. Chairman, Members of this Committee:

My name is Russ Livergood, lobbyist for the Montana Retail Association, appearing in opposition to House Bill No. 800 as it is presently written.

House Bill 800 changes the existing statutes that govern the small claims court. The present statute creates by resolution of County Commissioners, or by a county initiative, the small claims court. We feel this method is much better than that proposed by House Bill 800 which mandates the court be set up in the offices of the Justices of Peace.

The present statute provides that the officer presiding over the small claims court be an attorney, licensed to practice within the state of Montana. House Bill 800 has no such provision and would permit persons perhaps untrained in legal matters to sit in judgement over small claims. We feel that by requiring the presiding officer to be an attorney equity might better be served

The present statute provides that claims not to exceed \$1500 can be heard in small claims court. House Bill 800 limits claims to \$500, a figure much too low when one considers that many washer-dryer combinations, most refrigerators, most furniture groupings, many sophisticated stereo sets and most advanced television sets exceed the \$500 limit.

The present statute specifically prohibits the filing of an assigned claim, whereas House Bill 800 provides for three such assigned claims per calendar year. This practice could inundate the courts with collection service agents and destroy the true purpose of the small claims court.

We respectfully suggest that the present statute adequately serves the purposes of a small claims court and that House Bill 800 is unneeded. Mr. Chairman, members of this committee, we respectfully submit that House Bill 800 deserves a "do not pass" recommendation.

Mr. Chairman, members of this committee, thank you for the opportunity to appear before you and express the views of the Montana Retail Association.

(84.15)

Supreme Court of Wyoming
Cheyenne, Wyoming 82001



OFFICE OF THE COURT COORDINATOR

December 8, 1976

Hon. W.E. Dowlin, Jr.
Justice of the Peace
County of Yellowstone
Billings, Montana 59101

Dear Judge Dowlin:

Re your letter of December 6 on the tape recording.

As you know our minor court rules provide:

Rule 10(k):

Record. All criminal cases tried before a justice or a jury shall be recorded either electronically or stenographically. A type-written transcript of the testimony and proceedings may be requested by either party upon the payment of the typist's or stenographer's fee, as computed by law for district courts.

Rule 23(a):

On the Record; No Trial De Novo. Justice of the peace courts and municipal courts are not here considered courts of record for the reasons that they are not constitutionally created, they do not have seals, they do not permanently keep records of proceedings, they do not have recording officers, they are courts of limited jurisdiction, and there is no strong presumption of the veracity of their records. No trial anew in the district court is provided, and all appeals shall be tried on questions of law.

Rule 23(d):

Record. When notice of appeal is filed the justice shall forward the electronic recording, or transcript of the stenographic

7B-761-767-800

VISITOR'S REGISTER

Note 3/26/77
Bill Doherty

NAME

REPRESENTING

Check One
Support ☐ Oppose ☐

William E. Broadway

W. R. R. Green

X

MIKE McGRATH

ATTY GENL

7B7

X

MISS LIVERGOOD

MONTANA RETAIL ASSOCIATION

X

Ronald D. Brooks

First Montana Title Ins Co #713

X

Richard E. Neely

First Montana Title Co of Helena #713

X

Jim Sewell

Attorney - self HB 761

X

(Please leave prepared statement with Secretary)

COMMITTEE

VISITORS' REGISTER

DATE _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

SENATE

COMMITTEE

BILL

VISITORS' REGISTER

DATE

NAME	REPRESENTING	BILL #	(check one)	
			SUPPORT	OPPOSE
BRAD STROTTON	American Land Title Co	HB 713	Support Bill	Oppose Amendment
JIM ROBERTS	Montana Land Title Assoc.	HB 713	Support Bill	Oppose Amendment
Don Robinson	J.B. TEAMSTERS.	HB 761		
Paul M. Cann	MONTANA LEGAL Protection Plan, Inc.	HB 761		
Bob Brown	First Montana Title Co. of Bozeman	HB 713		
James Woodford	Sec. of State	HB 713		
Paul M. Cann	Montana Title Assn	HB 713	SUPPORT BILL WITH AMENDMENTS	
J. H. Cady	First Mont Title	HB 713	Support	
Wm. F. Gowen	HELENA ABSTRACT & TITLE CO.	HB 713	Support with Amend.	
Jim Sewell	MONTANA LAND TITLE ASSN	HB 713	Support with Amend.	
Wm. E. Dowlin, Jr.		HB 800		
Bob Brown	Deputy Title Co.	HB 713	Support	
Wm. E. Dowlin	Commercial Title Co.	HB 713	Support	
Russell E. Harshberger	AMERICAN ABSTRACT AND TITLE CO.	HB 713	Support	
Chris R. Leary	American Land Title Co. Missoula	HB 713	Support	
P. C. O'Leary	Montana Abstract & Title Assn.	HB 713	Support	
G. H. Mayes, Jr.	LAWYERS TITLE INSUR. CORP.	HB 713	Support	
James S. Knipper	American Land Title Co. - Bozeman	HB 713	Support	
Robert S. Knipper	" " " "	HB 713	Support	
Ernest Post	Mt. State AFL-CIO	HB 761	Amend	
Robert E. Johnson	1st Mont Title Assn	HB 713	Support	
John H. Peterson	1st Mont Title	HB 713	Support	
Phil Stroyer	1st Mont Title	HB 713	Support	
Frederick H. Brown	First Montana Title Ins Co	HB 713	Support	

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