

MINUTES OF MEETING  
SENATE JUDICIARY COMMITTEE  
January 8, 1979

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The third meeting of this committee was called to order by Senator Lensink in room 331 at 10:00 a.m.

ROLL CALL: All members present

WITNESSES PRESENT TO TESTIFY:

H. David Cogley - Legislative Council - SB 4 & SB 25  
Joan Mayer - Legislative Council - SB 4, SB 25, SB 54  
Mike McGrath - Attorney General - SB 54  
Brian Okerlund - University of Montana - SB 54  
Carol Kirkland - Montana Petroleum Assn. - SB 54, SB 25  
Dick Disney - Business Regulation - SB 54  
Daniel Hougon - Business Regulation - SB 54

CONSIDERATION OF SENATE BILL 54:

Senator Towe briefly explained the bill, which would allow for the use of restraining orders in enforcement of Montana Unfair Trade Practices.

David Cogley from the Legislative Council testified as to a case that was filed in Beaverhead County. Senator Turnage questioned the wording on the bill and Senator Towe made a motion to amend the bill on page 2, line 1, after the word "a" insert the word "temporary". The motion was carried unanimously.

Senator Brown raised some questions concerning the bill. Mr. Mike McGrath from the Attorney General's office explained that they supported the bill but that there was another bill that was to come to this committee that would clarify temporary restraining orders from temporary and permanent injunctions. Senator Towe suggested that we hold this bill until we get the other bill in this committee. There were no opponents present in regard to this bill.

CONSIDERATION OF SENATE BILL 4:

Senator Galt, sponsor of this bill, gave an explanation of the bill which generally revises and clarifies the laws in regard to mortgages, pledges and liens. He introduced Dave Cogley from the Legislative Council, who perused the bill section by section. Senator Towe questioned a change in the bill on page 2, line 24 and made a motion to amend the bill on this line by striking the word "mortgagor" and inserting in lieu thereof the word "mortgagee". This amendment passed unanimously.

Senator Towe also offered an amendment that on page 3, line 4 and also on line 6, the words "mortgage" be deleted and the words, "execution" be inserted in lieu thereof.

This amendment also passed unanimously.

Senator Towe also proposed an amendment on page 6, line 6, to strike "16-2101 - 2104," which passed unanimously. Senator Towe also offered the following amendment: on page 6, line 7, following "45-1113," insert "and" and strike "and 52-213,". This motion passed unanimously.

Senator Galt made a motion that Senate Bill 4 do pass as amended. The motion carried unanimously.

CONSIDERATION OF SENATE BILL 25:

Senator Galt introduced David Cogley from the Legislative Council who gave an explanation of this bill and went over the bill section by section. He offered an amendment to the title as follows: Title, line 6, strike "THE LAW" and insert "TITLE 16, MCA,"; strike "ALCOHOLIC BEVERAGES" and insert "ALCOHOL AND TOBACCO" and in the title, line 7, strike "AND" and following "16-6-302," insert "AND 16-10-102,". This motion passed unanimously, Senator Galt recommended that the bill pass as amended. The vote was unanimous.

RECONSIDERATION OF SENATE BILL 54:

Joan Mayer gave an explanation of the bill to clarify restraining orders. There was some discussion and Senator Towe moved that there should be a notice made to the codifier and that Ms. Mayer should reword this correction and that a vote be postponed until the committee is able to see the wording of the amendment.

Senator Brown introduced his aide, Kim Ritter.

The meeting adjourned.



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SENATOR LENSINK, Chairman Judiciary  
Committee

# STANDING COMMITTEE REPORT

January 9, 1979

MR. **PRESIDENT**

We, your committee on **Judiciary**

having had under consideration **Senate** Bill No. **4**

Respectfully report as follows: That **Senate** Bill No. **4**

Be amended in the introduced bill as follows:

1. Title, line 8.  
Strike: "16-2101 through 16-2104,"
2. Title, line 9.  
Following: "45-1113"  
Insert: "and"  
Following: "52-111"  
Strike: "and 52-213"
3. Page 2, line 24.  
Strike: "mortgagor"  
Insert: "mortgagee"
4. Page 3, line 4  
Strike: "mortgage"  
Insert: "execution"

XXXXXX  
DO PASS

(Continued)

- 5. Page 3, line 6.  
Strike: "the mortgage"  
Insert: "execution"
- 6. Page 6, line 5.  
Strike: "16-2101 through 16-2104,"
- 7. Page 6, line 7.  
Following: "45-113,"  
Insert: "and"  
Following: "52-111,"  
Strike: "and 52-213,"

And As Amended  
Do Pass

*P.A.*

*E. R. Lensink*  
.....  
E. R. Lensink

Chairman.

Date 1/8/79

ROLL CALL

JUDICIARY COMMITTEE  
46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
Lensink, Everett R., Chr. (R)	✓		
Olson, S. A., V. Chr. (R)	✓		
Turnage, Jean A. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Anderson, Mike (R)	✓		
Galt, Jack E. (R)	✓		
Towe, Thomas E. (D)	✓		
Brown, Steve (D)	✓		
Van Valkenburg, Fred (D)	✓		
Healy, John E. (Jack) (D)	✓		

Each Day Attach to Minutes.





SENATE MEMBERS

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CHAIRMAN

FRANK HAZELBAKER  
VICE CHAIRMAN

CHEI HAYLOCK

PAT M. GOODRICH

DIANA S. DOWLING  
EXECUTIVE DIRECTOR  
CODE COMMISSIONER

ELEANOR ECK  
ADMINISTRATIVE ASSISTANT

ROBERTA MOODY  
DIRECTOR, LEGISLATIVE SERVICES



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ROBERT L. MARKS

H. DAVID COGLEY  
DIRECTOR, LEGAL SERVICES

ROBERT PERSON  
DIRECTOR, RESEARCH

January 3, 1979

TO: All Committee Chairman  
FROM: Dave Cogley  
RE: Code Commissioner Bills

There are over 60 Code Commissioner bills in the legislature this session which have been assigned to various committees. There has been some confusion as to exactly what these bills do. They have been loosely referred to as "recodification" bills and this may have caused some of the confusion. None of the Code Commissioner bills "recodify," that is, renumber or rearrange. They merely make corrections or clarify the laws. The needed amendments were discovered during our work on recodification, and that is probably why they are referred to as recod bills.

For your information and better understanding, I submit this short summary and explanation of the recodification project and the resulting bills you will be considering.

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The 1975 Legislature provided for a recodification of the Revised Codes of Montana, 1947, and created the office of Code Commissioner to be in charge of the recodification. SB 1 this session is the result of that recodification. In addition to recodifying the laws, the Code Commissioner was charged with the task of continually updating the code by reporting to the Legislative Council prior to each session recommendations for legislation which will update, correct, and clarify the law. These bills are the result of those recommendations.



CODE COMMISSIONER BILLS

1. Bills were prepared to take care of all the needed amendments such as:

(a) Conflicting laws - often new legislation is adopted which impliedly repeals other legislation or is in hopeless conflict therewith - these problems appear for the first time when the attorney attempts to group like laws together.

(b) Archaic laws - there are many laws which were enacted years ago and have never been utilized or referred to and, in fact, have become "lost" within the jumble of laws. Changes in customs and practices have rendered many laws obsolete that still appear in the code but are either ignored or simply not known about.

(c) Unconstitutional laws - there has been no organized effort by the legislature to repeal laws declared unconstitutional by the Supreme Court. In fact, there are many still appearing in the code. In order to eliminate any question about the status of such laws in their relationship to a new code, they will be specifically repealed.

(d) - Incorrect laws - if a law was inaccurate or misleading because of imprecise drafting, typographical errors, or other reasons, it was included in a Code Commissioner bill.

2. Code Commissioner bills were not prepared solely to update archaic language, use modern bill drafting terms, or correct minor problems if there was little likelihood that the section will be misconstrued.

3. PLEASE NOTE that in each Code Commissioner bill grammar and form was reviewed and the latest bill drafting style used. All sections were amended to insure compliance with such drafting rules as:

- (a) use of the present tense;
- (b) use of the active voice;
- (c) avoiding use of the false imperative;
- (d) avoiding use of a negative subject with an affirmative "shall";
- (e) avoiding use of provisos as conjunctions;
- (f) avoiding use of archaic, redundant, unnecessary, and imprecise words.

All Committee Chairman  
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New uniform rules for capitalization, punctuation, and numbers were also followed in each bill.

4. Because, in addition to the substantive changes needed, the above style and form changes were made in all code sections being amended, each Code Commissioner bill has attached a summary of and reason for the substantive changes made. There is no discussion of the routine form or grammar changes. If the amendment is not discussed on the green explanatory sheet it means it is merely a form change and not a change in meaning.

Please contact me or one of the Legislative Council staff attorneys if you have any questions.

Thank you.

# STANDING COMMITTEE REPORT

.....January 8,..... 19 79..

MR. PRESIDENT.....

We, your committee on .....JUDICIARY.....

having had under consideration .....SENATE..... Bill No. 25.....

Respectfully report as follows: That.....SENATE..... Bill No. 25.....

Be amended in the introduced bill as follows:

1. Title, line 6  
Strike: "THE LAW"  
Insert: "TITLE 16, MCA,"  
  
Strike: "ALCOHOLIC BEVERAGES"  
Insert: "ALCOHOL AND TOBACCO"
2. Title, line 7  
Strike: "AND"  
Following "16-6-302,"  
Insert: "AND 16-10-102,"

As so amended  
DO PASS

.....*[Signature]*.....  
Chairman.