

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 5, 1979

The twenty-sixth meeting of the Senate Judiciary Committee was called to order by Senator Everett R. Lensink, Chairman, on the above date in room 331 of the capitol building at 9:35 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF SENATE BILL 207:

Senator Hafferman, from district 11, Lincoln County, gave an explanation of this bill, which is an act to adopt the uniform recognition of acknowledgments act and to conform other statutory provisions thereto. He stated that he was a notary public and he said that this changes the law a great deal and amends and repeals certain sections. He said that this bill does give authority to people overseas to notarize deeds.

There were no further proponents and no opponents.

There were a few questions from the committee and the hearing on this bill was closed.

CONSIDERATION OF SENATE BILL 278:

Senator Thomas gave an explanation of this bill which is an act to generally provide for the use of interpreters for the deaf in certain administrative or judicial proceedings. He stated that this legislation has been worked on for two years and he said that the policy statement of this bill was on page 1, lines 9 through 15. He introduced Floyd McDonell, the superintendent for the School for the Deaf and Blind.

Mr. McDonell stated that they have studied several bills around the United States in connection with this matter and this bill represents model legislation that has been passed in about sixteen states.

Mrs. Van Tegkem from the Montana School for the Deaf and the Blind stated that she was very pleased to be treated like a first-class citizen with an equal voice and she said that if a deaf person has to write down everything that this kills the enthusiasm of those who have to deal with the deaf. She said that an interpreter insured an equal voice.

Mr. Jim Pederson, representing the Vocational Rehabilitation Council, stated that it has been a problem for many to get interpreters for deaf adults and that this bill will strengthen that.

Hal Millior, a parent of a deaf fourteen-year-old and also representing the Montana school for the Deaf and Blind, stated that he would support some changes, that there is a problem on page 2 on lines 10 and 11 wherein it defines a qualified interpreter; and he stated that there is now an agency that determines the qualifications and that the department of social and rehabilitation services would maintain a list of qualified interpreters and if one could not be found, they could be given the authority to find interpreters.

He also said that when a deaf person takes a driver's test, they will usually not allow an interpreter to come along, and they would like to make sure that this includes all these people with the word "agency".

Jack Olson, representing Montana State University - speech department - stated that he was an audiologist and he wondered if the referral agency should be someone other than the department of social and rehabilitation services and that probably they would not want to take this on. He stated that the Montana Services for the Deaf has a list of members and probably they should be the agency to coordinate this state-wide service.

He also commented on section 9, compensation for an interpreter and said that he felt that SRS should set up the fees and that there should be specific guidelines for these fees as they are concerned that the fees may be too low and it would seem that it should be necessary to follow a fee schedule. He was concerned that in a legal situation where there is a jury that a person who has been brought in to interpret should have some legal training, that it must be someone who has had expertise, and he stated that it is no cup of tea for a legal interpreter to go through what they have to go through. He stated that there were only five specific places in the United States where you can get this kind of training. He also felt that if a person cannot be found, they should go out of state to find someone in who is qualified.

Bob Donaldson, director of the department of social and rehabilitation services, the vocational rehabilitation program stated that they were in favor of the bill and they certainly would not set up another registry for certifying interpreters and it was the same with the fee schedule. He stated that it is a reasonable bill and we can get together with them and set up some rules under which to operate without adding any new staff or costs to the state of Montana.

There were no further proponents and no opponents.

Senator Towe said that he understands that this is more than just legal proceedings or proceedings of a quasi-legal nature and where the word "proceedings" is used that this would not include driver license situations and others.

Mr. McDonnell stated that he thought it was the intent of the provision to include things like that - for example, condemnation proceedings, zoning changes, etc.

Senator Towe stated that they would cover most of these with the word, "proceedings" but you are not going to pick up drivers licenses and if you want to include those, you must have some other language.

Senator Towe also questioned if there were any other situations other than a driver's license and Ms. Van Tegkem stated there are other cases in many other states and some day it may come here - such as beautician licenses, real estate licenses, etc.

Senator Turnage suggested that maybe a better choice of words would be applicable.

Senator Towe wondered if the whole matter of interpreters through visual means is that adequate in the real serious trial - can most deaf people fully understand the proceedings against them by watching the sign language.

Mr. McDonnell said yes, that two or three years ago, two deaf people got in trouble in Missoula, they were charged with kidnapping and attempted homicide, the court asked him to come in and he helped with the conversation with the attorneys, the district attorney, and with the judge and this was a jury trial. He stated that if those two deaf people had not had an interpreter, it would have been a mockery of justice because there is no way for them to know what the attorneys were talking about, the questions, etc. and he felt it was a matter of necessity. He stated that his position of being an interpreter was only official after the judge was satisfied that he was qualified and acceptable to the deaf people themselves so they had an opportunity to make a decision on his skills or lack of skills and that the judge made sure of that.

Senator VanValkenburg stated that their firm was involved in the representation of those people and he felt that they were adequately represented. He said that he thinks that it is the attorney's primary responsibility to see that it is being done and he did not think that the legislature can guarantee that this will be done. He said the attorney must understand that the client is understanding the proceedings; and he said that before the interpreter came into the picture, he communicated with them by writing and that his was a very difficult situation. He stated that deaf individuals do not have a very good writing skill but they do have good communication skills by sign language.

Senator Lensink asked if they could work out any amendments they might like the committee to consider.

Senator Turnage questioned Dr. Olson about the registry of qualified interpreters and Dr. Olson explained this.

There being no further questions, the hearing on this bill was closed.

CONSIDERATION OF SENATE BILL 219:

Senator Turnage stated that this bill was an alternative to Senate Bill 202. This bill is an act to create a new judicial district by splitting the fourth district into two districts consisting of Mineral, Sanders, and Lake Counties and Missoula and Ravalli Counties respectively. He said that if we approve the other bill than this bill should not be further considered. He said that a resolution will be introduced to study all the districts in the state and this matter could be handled in that area. He said that he would not suggest that we do anything with this bill at this time until we act on the other bill.

Margaret Davis, representing the League of Women Voters said that she concurred in Senator Turnage's remarks.

There were no further proponents and no opponents.

There being no questions, the hearing on this bill was closed.

CONSIDERATION OF SENATE BILL 296:

Senator VanValkenburg gave an explanation of this bill, which would specifically include tribal judges on the list of officials authorized to solemnize marriage.

Mere Lucas, representing DCA of Indian Affairs, gave a statement in support of this bill.

There were no further proponents and no opponents.

Senator Olson questioned as to what the qualifications were for a tribal judge and Mr. Lucas replied that they must be well-respected within the Indian community. Senator VanValkenburg stated that the tribal council usually picks the tribal judge and he does receive some training.

Senator O'Hara asked what other things do they handle. Mr. Lucas stated each tribe has their own law and own codes. They handle misdemeanor cases but felony cases are handled by the federal courts.

Senator Brown asked about how the record keeping would tie in with the record keeping of the Board of Health and stated that without this information there would be a gaping hole in the authenticity of vital statistics. Mr. Lucas said that the Blackfoot tribe had this problem and they came right to Helena to solve it. Senator Brown asked if they would favor shipping these statistics right to Helena and not going through the district judge.

Senator Turnage questioned whether they do not still have to get their licenses from the district court and with a yes answer, he stated that there shouldn't be that much of a problem.

Senator Brown suggested that before we take action on this bill, that Valencia Lane, the researcher, call the records and statistics department and see what problems might occur and if they have objections.

The hearing on this bill was closed.

DISPOSITION OF SENATE BILL 202:

This is a bill which would provide for a fourth district court judge in the fourth judicial district. Senator VanValkenburg moved that section 2 be deleted on lines 20 to 23, page 1. The motion carried unanimously.

Senator Turnage noted that there was no prohibitive language saying that they must live in Missoula, and Senator VanValkenburg stated that they can live in any county seat.

Senator Healy questioned if this would take effect immediately in eliminating section 2. Senator VanValkenburg stated that it would be in effect on July 1, and they would have thirty days in which to appoint a judge and the governor has thirty days and the judge could be there by the first of September.

Senator VanValkenburg moved that the bill do pass as amended. The motion carried unanimously.

DISPOSITION OF SENATE BILL 219:

Senator Turnage moved that Senate Bill 219 be tabled. The motion carried unanimously.

DISPOSITION OF SENATE BILL 215:

This is an act to punish the commission of an assault upon a youth less than 12 years old by an adult by imprisonment in the state prison for a term not to exceed five years.

Senator Turnage said that this is making a felony out of

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Senate Judiciary Committee
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what used to be a third degree assault and that there is some language in this of a simple assault that should not apply.

Senator Brown moved to amend the bill on page 2, line 6, after "conviction" insert "under subsection (1)(a) of this section. The motion carried unanimously.

Senator Turnage moved that the bill do pass as amended. The motion carried unanimously.

DISPOSITION OF SENATE BILL 274:

Valencia Lane, researcher for the committee, stated that she talked to Dave Woodgerd in the State Lands and he gave her some information on navigable streams and rivers.

Senator Turnage stated that he thought Senator Thiessen's concern is already taken care of if in state law. He said that it seems to him that if you gain land by accretion, you gain all of it - not just surface rights. He said that it had not been tested and he did not think anyone has drilled on it.

Senator Brown moved that this bill do not pass. The motion carried unanimously.

Senator Lensink stated that the committee will meet after session and will also meet on Thursdays after the session.

There being no further business, the meeting adjourned at 10:43 a.m.

Everett R. Lensink
SENATOR EVERETT R. LENSINK, Chairman
Senate Judiciary Committee

Date 5/22/2013

ROLL CALL

JUDICIAL COMMITTEE

46th LEGISLATIVE SESSION - 1979

Each Day Attach to Minutes.

Please sign & return the following Tuesday

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B.I.L.L. ٢٢٩
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SENATE

COMMITTEE

VISITORS' REGISTER

DATE

Please note bill no.

NAME	REPRESENTING	BILL #	(check one) SUPPORT	OPPO
Donald M. Flakken	Fin. Industry	207	<input checked="" type="checkbox"/>	
MECK, Louis	Confidential Affairs	296	<input checked="" type="checkbox"/>	
Leinen, Hippo	Env. Board of Natl.	278	<input checked="" type="checkbox"/>	
Richard A. Ede	Moist. Assn. of the West	278	<input checked="" type="checkbox"/>	
W. R. Gonzalez	ASPS	278	<input checked="" type="checkbox"/>	
Till Hwy	ASPI-ESL. of the West	278	<input checked="" type="checkbox"/>	
Kirby, Albinicki	M. & S. S. L. & P. A.	278	<input checked="" type="checkbox"/>	
Mark Albinicki	Mo. Assn. of the West	278	<input checked="" type="checkbox"/>	
Frank, L. M.	Mo. Assn. of the West	278	<input checked="" type="checkbox"/>	
Jim Petersen	Recyclable Res. Corp.	278	<input checked="" type="checkbox"/>	
Hal Miller	Recyclable Res. Corp.	278	<input checked="" type="checkbox"/>	
Mark V. Carlson	M. L. S. L. & P. A.	278	<input checked="" type="checkbox"/>	
Mark McDonald	Mo. Assn. of the West	278	<input checked="" type="checkbox"/>	
William J. Conner	M. S. L.	278	<input checked="" type="checkbox"/>	
Philip E. N. Wren	M. S. L.	278	<input checked="" type="checkbox"/>	
Tom G. Duncan	M. S. L.	278	<input checked="" type="checkbox"/>	
James D. D. H.	M. S. L.	278	<input checked="" type="checkbox"/>	
Donald C. Olson	Mo. Assn. of the West	278	<input checked="" type="checkbox"/>	
James Brown	M. S. L.	278	<input checked="" type="checkbox"/>	
Jeffrey S. Bain	Mo. Assn. of the West	278	<input checked="" type="checkbox"/>	

Bills to be Heard by Senate Judiciary Committee
On Monday, February 5, 1979

SB 219 (Turnage)

Proposed bill: would create a new judicial district by splitting the 4th district. The 4th district would then consist of Missoula and Ravalli Counties. The new 20th district would consist of Mineral, Lake, and Sanders Counties.

SB 278 (Thomas, Dussault)

Current law: 3-1-316 requires the appointment by the court of an interpreter for a deaf person who is a party to any legal proceeding.

Proposed bill: provides for a more specific and detailed handling of this situation; requires the appointment of an interpreter in administrative as well as judicial proceedings and repeals 3-1-316.

Section 1. Policy

Section 2. Definitions.

Section 3. Specifies the situations in which an interpreter must be appointed - in any proceedings (1) before a court or grand jury (2) before a governmental agency, and (3) in which the deaf person may face confinement or criminal sanction; and (3) provides that a deaf person who is arrested must be allowed an interpreter as soon as possible before interrogation or taking of a statement and provides that a statement of a deaf person can not be used against the deaf person unless the statement was made knowingly, voluntarily, and intelligently or in the case of a waiver, the court makes a special finding that the statement was made knowingly, voluntarily, and intelligently.

Section 4. Before appointment, it must be determined that there can be accurate communication between the deaf person and the interpreter.

Section 5. An intermediary interpreter can be used if the qualified interpreter can not adequately communicate with the deaf person.

Section 6. Proceedings can not begin until the interpreter is in full view of the deaf person.

Section 7. Coordination of interpreter requests - the department of social and rehabilitation service shall furnish a qualified interpreter; the Montana Assoc. of the Deaf may assist the department in developing standards for certification of interpreters and preparing lists of qualified and available interpreters.

Bills to be heard by Sen. Judiciary Committee
Monday, Feb. 5, 1979.

Section 8. Interpreters shall take an oath.

Section 9. Interpreters are entitled to a reasonable fee plus actual expenses for travel and transportation. If appointed by a court, the fee will come from the county general fund; otherwise, it is to be paid out of funds available to the appointing official.

Section 10. The deaf person can request a waiver of the right to an interpreter, subject to approval of his counsel, if he has one, and the appointing authority.

Section 11. Communication between the deaf person and his interpreter is confidential.

Section 12. Severability.

Section 13. Repeals 3-1-316

Section 14. Effective on passage and approval.

SB 296. (Van Valkenburg)

Section 1. amend 40-1-301.

Proposed bill: specifically includes tribal judges on the list of officials authorized to solemnize marriage.

SB 207 (Hafferman)

An act to adopt the uniform recognition of acknowledgments act which concerns the recognition in the enacting state of acknowledgments and other notarial acts performed elsewhere for use in the enacting state. It describes in general terminology the persons whose notarial act will be recognized in the enacting state so that new designations of officers will not require additional amendments; lists officers whose performance of notarial acts will be recognized in this state; prescribes where authentication of the power of the officer is necessary for recognition of acknowledgments; states what the performing notarial act shall certify; states what certificates by officer taking acknowledgment will be recognized. It also prescribes a short form of acknowledgment which will be recognized if used, but does not prohibit use of other forms.

All the Act does is provide that whenever the laws of the enacting state require an act of acknowledgment to be performed and whenever they authorize a notary public of enacting state to perform the act, then the officers designated in the proposed act may perform the act and it is to be recognized in the enacting state.

The bill conforms other statutory provisions to the Act and repeals 1-5-103 dealing with proofs and acknowledgments

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Bills to be heard by Sen. Judiciary Committee
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taken outside the United States (which is dealt with in the Act.) and repeals 1-5-501 through 1-5-507 dealing with commissioners of Deeds. (Summary from notes of Commission which adopted the uniform act)

Note: 1-5-407 dealing with certifying the official character of a notary is not repealed because this section will still be necessary when dealing with acknowledgments made in states which have not adopted the uniform act.

NAME WARD A. SHANAHAN

BILL NO. SB 214

ADDRESS 917 Gilbert Street Helena MT DATE 2-6-79

WHOM DO YOU REPRESENT Myself as a citizen

SUPPORT OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: I appear to support SB 214 because I firmly believe binding (not compulsory) arbitration should be allowed in Montana and that the Uniform Arbitration Act is the best vehicle to provide it.

I have served in several cases as the Arbitrator to resolve minor disputes in the construction industry. I know that this method of dispute resolution is simple, fast and efficient in most cases of this kind.

My profession has a duty to suggest and facilitate the best possible methods of dispute resolution for the public benefit, so long as the traditional safeguards of justice and fair play are observed. This bill represents an improvement in the remedies available to people and businesses, especially in small cases, and should provide a simple and inexpensive tool to resolve many controversies without resort to the courts.

WARD A. SHANAHAN

Exhibit A

HOWARD C. BURTON
COUNSELOR AT LAW
502 STRAIN BUILDING
GREAT FALLS, MONTANA 59403

Exhibit B

TELEPHONE (406) 452-6457
P. O. BOX 2265

OUR FILE

YOUR FILE

February 1, 1979

Hon. George Roskie
Senate Chambers
Capitol Building
Helena, Montana 59601

Dear George:

I understand there will be coming up before the House and Senate a Uniform Arbitration Act which excludes arbitration of disputes involved under labor agreements.

This is totally unpalatable, in my opinion, to both employers and labor organizations in the State of Montana.

Nearly every contract (other than those involving public employees) negotiated between employers and labor organizations include grievance and arbitration provisions which generally culminate in the joint selection of an arbitrator whose decision is final and binding.

Under Federal labor law if such a clause is contained in the labor agreement, and either party refuses to arbitrate, a complaint seeking a mandatory injunction to compel arbitration may be filed in the Federal courts.

I am enclosing a recent decision of the Supreme Court of the State of Montana which includes the dissent of my former colleague, H. William Coder. Also enclosed please find a Bench Memorandum rendered by court clerks to the justices. Finally you will find enclosed a comprehensive statewide agreement which contains grievance and arbitration procedures common to most labor agreements executed in the State of Montana.

The Palmer Steel Structures case, if not obligatory by legislation, can raise complete havoc with the settlement of labor disputes which do not come within purview of Federal labor legislation. Believe me, there are many agreements which are not covered by the Labor Management Relations Act.

The Federal courts employ a principle that wherever possible they must follow the law of the forum. There is another prospect which rests in the Doctrine of Pre-emption.

The Doctrine of Pre-emption is that once the Federal government enters a chosen field no state laws or decisions may be rendered or considered which might be inamicable to Federal statutes, rules and regulations.

There is a possible conflict between the Palmer case and there may be a possible conflict between the Uniform Arbitration Act proposed with Federal law, considering the two doctrines cited above.

Though it is my opinion that contracts covered by Federal law would be covered by the Doctrine of Pre-emption with the usual Federal court remedies, a state statute on Uniform Arbitration, omitting arbitration on labor agreements, would considerably muddy the waters.

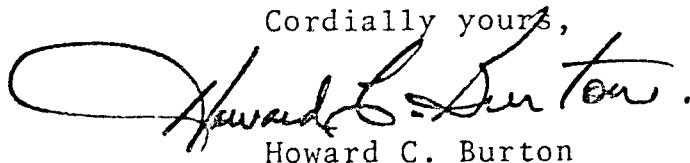
Employers, large and small, and labor organizations, large and small, believe in the principle of binding arbitration - this because proceedings in the court are tedious, expensive and often fraught with long delays.

I sincerely trust that if a Uniform Act is to be enacted you, your fellow senators and representatives, will have the sagacity to also cover labor agreements. Better arbitration than strike or go to court.

You know my experience in this field and I am sure that I speak for the majority of representatives of both labor and industry.

I would sincerely appreciate receiving a copy of the proposed bill.

Cordially yours,



Howard C. Burton

HCB:ea

Encl.

cc: Mr. Neil Blacker
American Arbitration
Suite 330, Central Building
Seattle, Washington 98105

SB 202

1. Page 1, lines 20 through 23.

~~Entire~~

Strike: lines 20 through 23 in
their entirety

SB 215
→ Title

2. Page 2, line 6.

Following: "conviction"

Insert: "under subsection (1)(a)"

1. Title, line 6.

Following: "ADULT"

Insert: "UNDER CERTAIN
CIRCUMSTANCES"

274-1-6

STATE OF MONTANA

REQUEST NO. 118-79

FISCAL NOTE

Form BD-15

In compliance with a written request received January 25, 19 79, there is hereby submitted a Fiscal Note for Senate Bill 219 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

Senate Bill 219 would create a new Judicial District by splitting the 4th District into two districts. The 4th District would include Missoula and Ravalli Counties and the 20th District would include Mineral, Lake, and Sanders Counties.

FISCAL IMPACT:

Since there would not involve the addition of a new Judge the revenues and expenditures to the State would not be affected.

LOCAL IMPACT:

A judge will be moved from the 4th District to the 20th District. By doing this, costs would be increased by the 20th District and decreased in the 4th by the same amount.

Richard D. French
BUDGET DIRECTOR
Office of Budget and Program Planning
Date: 1/23/79

STANDING COMMITTEE REPORT

.....February 5, 1979

MR. President:

We, your committee on **Judiciary**

having had under consideration **Senate** Bill No. 202...

Respectfully report as follows: That **Senate** Bill No. 202...

introduced bill, be amended as follows:

1. Page 1, lines 20 through 23.

~~Strike: lines 20 through 23 in their entirety~~

And, as so amended

DO PASS

STANDING COMMITTEE REPORT

February 5, 1979

MR. President:

We, your committee on Judiciary,

having had under consideration Senate Bill No. 215,

Respectfully report as follows: That Senate Bill No. 215,

introduced bill, be amended as follows:

1. Title, line 6.

Following: "ADULT"

Insert: "UNDER CERTAIN CIRCUMSTANCES"

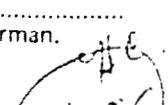
2. Page 2, line 6.

Following: "conviction"

Insert: "under subsection (1)(a)"

And, as so amended,

DO PASS



STANDING COMMITTEE REPORT

.....February 5..... 19...72...

MR.....President:.....

We, your committee onJudiciary.....

having had under considerationSenate..... Bill No. 274.....

Respectfully report as follows: That.....Senate..... Bill No. 274.....

DO NOT PASS

~~DO PASS~~