

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 28, 1979

The forty-sixth meeting of the Senate Judiciary Committee was called to order by Senator Everett R. Lensink, chairman, in room 331 of the capitol building on the above date at 9:32 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF HOUSE BILL 133:

Representative Eudaily stated that this bill was introduced at the request of the attorney general. This bill, which is an act to require notice to the attorney general when a state department or board initiates or intervenes in a court action or initiates an appeal, was the result of an interim study of state legal services.

Mike McGrath, Assistant Attorney General in the Department of Justice, gave a statement in support of this bill. He stated that if a person sues the state, the attorney general must be served, if the state files an appeal, then the attorney general would also have to be served; and this would allow one point in state government where litigation matters are taken care of.

There were no further proponents and no opponents.

Senator Brown questioned if this bill was really necessary, and wondered if this couldn't be done by the governor issuing an order, and questioned if it has to be done by statute. Mr. McGrath stated that he does not think that it can be done that way, that the supreme court said that the attorney general can't control the Department of Natural Resources and the only department that he knew that was following this now is the Department of Fish and Game.

Senator Towe questioned when they get the notice, what will they do with it and Mr. McGrath said that it depends, that they discussed this at a staff meeting and a determination was made that the pleadings as they come in would be reviewed, they would assign them to someone, and that probably they would not do anything but there might be cases where the attorney general might want to have considerable contact with the agency.

Senator Towe moved that the bill be concurred in. The motion carried unanimously.

Minute - February 28, 1979
Senate Judiciary Committee
Page two

CONDISERATION OF HOUSE BILL 203:

This is an act to adopt the revised uniform enforcement of foreign judgments act, etc. Representative Anderson, Flathead County, gave an explanation of this bill, which he stated came from a conference of commissioners on state law. He stated that there was a 42 per cent caseload increase in the past four years. He said that this bill will allow for compliance of Article 4 of the constitution and makes the process less complicated.

Bruce McGennis, chief counsel for the Department of Revenue, gave a statement in support of this bill. He said that there is a reciprocal part to this bill and those states that have this type of foreign judgment act, that Montana, by having it, can go into another state and use the same procedures to effect a Montana judgment against those other states. He said that the Department of Revenue is the state's collector and that a lot of debtors are residents of other states, this involves student loans, there is one case involving taxes of an individual who worked in this state and did not file returns and he owes the state \$25,000.00.

Bill Romaine, representing himself as a lawyer, stated that he does have some problems with this bill. He stated that this bill would increase his revenue, but he cited a case in Butte, where a Butte businessman ordered goods from Texas and if you do business in Texas, you are under Texas jurisdiction. He said that on page 1, that this seems to say that, but it really doesn't. He also said there was a problem with the notice being sent by mail. He gave an example of an instance where he was mailed a special delivery letter, and it took twenty-two days for it to be delivered, and he stated that he is not satisfied with the service of the post office. He stated that with these minimal changes then he felt that this was a good piece of legislation.

There were no further proponents and no opponents.

Representative Anderson stated that this law has been adopted in eleven other states now and he felt that where they arbitrarily set a time of 20 days that he would have no objection to amending this further to allow enough time.,

Senator Towe questioned Representative Anderson if he would have any problems with them amending the matter of foreign judgments and Senator Anderson said that he would have no problem except that this is a uniform law.

There were no further questions or discussion and the hearing on this bill was closed.

Minutes - February 28, 1979
Senate Judiciary Committee
Page three

CONSIDERATION OF HOUSE BILL 163:

This is an act to repeal the statutory authorization for foreclosure of a security interest in personal property by sheriff's attachment and sale without notice to the party in possession or prior hearing, etc.

Representative Metcalf from Helena stated that he introduced this bill at the request of the attorney general's office, and that this repeals a section of law that is now covered under other sections.

Mike McGrath, Assistant Attorney General, stated that in 1977, the legislature passed a bill regarding the procedure of attachment of personal property and that this section was overlooked when we were repealing the other sections.

Bill Romaine, representing the Montana Sheriff and Peace Officer Association, gave a statement in support of this bill. (See Exhibit A)

There were no further proponents and no opponents.

Senator Turnage questioned the language on page 1, line 17, wherein it stated "and the property subsequently disposed of" and he thought they would mean "sold" instead of "disposed of".

Senator Turnage and Senator Towe asked some questions on section 1 and the hearing on this bill was closed.

CONSIDERATION OF HOUSE BILL 225:

This is an act to provide a criminal penalty for knowingly permitting livestock to enter or remain unlawfully upon the premises of another. Representative Conroy stated that he introduced this bill on behalf of the county attorney's association and this was called the "no trespassing bill on livestock." He said that this was repealed in 1973, it was recommended that this be studied and an attempt be made to come up with a bill that would take care of the various problems involved, and he stated they have quite a problem in the Gallatin Valley with hogs.

Tom Honzel, representing the Montana Association of County Attorneys, offered some amendments from Mons Teigan, which he stated were not adopted by the House Judiciary Committee for some reason. (See Exhibit B) He stated that the bill is in conformity with the new criminal code. He told of one rancher who apparently turned all his cattle into another's fall pasture; and when the rancher got back, he had no pasture. He also told of hogs being in some-

one's garden and the owner shot one of the hogs and had it for a wedding feast and the landowner felt it was the only recourse he had. He said that right now, a landowner has a civil remedy only and he said that he did not know if this bill is the answer and he certainly did not want to create any problems with the stockgrowers.

Mons Teigen, representing the Montana Stockgrowers, the Woolgrowers, the Agriculture Pres. Association, and the Farm Bureau, stated that they feel they need the amendment that was proposed.

Alice Frysle, representing the Montana Cattlemen's Association and Women Involved in Farm Economics, stated that she would like to see the bill tabled and said that they have not seen the amendment as presented, but would like to look at it.

Gail Potter, from Big Meadow Grazing A, stated that they have intermingling land, no fences, just mountains and natural barriers, and that subdividers are moving out along the range; and to keep the livestock from trespassing, they almost always must have a fence.

Paul Huser, representing U.M.P.C.A. and himself, stated that this definitely would be a hardship on anybody that runs cattle, that cattle do stray and he did not know how cattlemen can keep them from trespassing.

Leigh Herman, representing the Western Montana Stockmans Assoc., stated that subdividers should put up their own half of the fence.

Gene Spildy stated that he was really upset over this piece of legislation, you get cattle on people's property at times, and you just can't help it.

Representative Conroy stated that he was on the other side of the fence, that people see his grass, cattle come in and eat it; and then he has none left.

Senator Brown questioned if they were asking them to study this this year - you are not asking for an interim study?

Senator Towe asked Representative Conroy if he was satisfied with Mons Teigen's amendment and Representative Conroy stated that he was.

Senator Galt questioned what does forty-eight hours mean and Mr. Teigen said that he has to get the cattle off his property within forty-eight hours. Senator Brown stated that he has a problem with

Minutes - February 28, 1979
Senate Judiciary Committee
Page five

forty-eight hours, and he gave an example of his father's problems in the Bitterroot, and he stated that forty-eight hours is too long.

Senator Towe questioned why do you need any notice if he intentionally does it.

Senator Olson questioned if there was a definition of legal fence, and it was answered that it must be two strands; and he asked how about an electric fence and one strand, the reply was it must be two strands.

There were no further questions or comments, and the hearing on this bill was closed.

CONSIDERATION OF HOUSE BILL 223:

This is an act to permit supervisory law enforcement personnel to control telephone communications to and from a person holding hostages. Representative Conroy gave an explanation of this bill.

Tom Honzel, representing the Montana Association of County Attorneys, stated that they became aware of this problem last year; they became concerned that they had no communication between a house and themselves other than a bull horn; and they were particularly interested in telephone lines. He stated that an individual may be holding hostages and someone has to be in charge of that situation to get a call into the person or get a call out. He said that they are trying to give law enforcement people an additional tool to save lives and that other states do have similar legislation. He stated that he talked to the telephone people, who stated that they did not have problems with this bill.

Jim Hughes, representing Mountain Bell Telephone Company, stated that he would like to offer language that they feel would much more closely define what the liability would be. He offered an amendment to the committee.

There were no further proponents and no opponents.

Senator Towe stated that the old statute on wire tapping was eliminated and he wondered why this bill is even necessary.

Mr. Honzel said that he did not know without this legislation, if they can do this; and he said that if Mountain Bell cuts the lines, there is a potential that they might be liable. Mr. Hughes

stated that they do endorse much stronger and stringent control of this, he said that they have had people go to jail for refusing; and he stated that most of the time-cutting would not be appropriate, this would probably be done in a central office.

There were no further questions or comments, and the hearing on this bill was closed.

CONSIDERATION OF HOUSE BILL 224:

This is a bill to provide that a person does not commit the offense of custodial interference if he voluntarily returns an individual taken, enticed, or withheld from lawful custody to lawful custody prior to arrest. Representative Conroy gave an explanation of this bill.

Tom Honzel, representing the Montana Association of County Attorneys, stated that he has filed complaints in this matter at least four or five times in the last year, and he gave an example of the problems involved. He stated that there was an additional problem here in Helena because of the Deaconess Home.

There were no further proponents and no opponents.

Senator Turnage stated that the typical thing you are going to be contending with is the hysterical wife calling up when her husband is two hours late in returning the child, and he said that you do not want to prosecute a case like that. Mr. Honzel said the only time they file a complaint is if they take the child out of this jurisdiction; he said that they make them wait a couple of days before we take any action.

Senator Turnage stated that the problem is to get the kid back and he stated that the present law now allows an arrest and all you want to do is get the kid back and teach the fellow a lesson. Mr. Honzel stated that they are refusing to even arrest in the other states right now, and our governor handles most of the extraditions and he said that we can't even get the person arrested. Senator Turnage stated that even if he voluntarily returns the child, I think you are asking for problems in this bill.

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

CONSIDERATION OF HOUSE BILL 226:

This is an act to provide that the county attorney or deputy county attorneys may not be appointed counsel for a minor in divorce or guardianship proceedings, etc. Rep. Conroy gave an explanation of this bill.

Tom Honzel, representing the Montana Assn. of County Attorneys, stated that it is the feeling of the county attorneys that we do not belong in those cases and he said that in larger cities it is taking away a lot of time for other duties that they have, and he said that this bill would just make it clear that the court is not suppose to use the county attorneys.

There were no further proponents and no opponents.

Senator Turnage moved that the bill be concurred in.

Senator Van Valkenburg stated that it seems to me to be obvious that the supreme court was trying to save some money for the tax-payers and he stated that, as he recalled, that this was not in every case, but in cases where there was really no money available to pay for counsel. Mr. Honzel said that that is what it says - in contested custody cases.

Senator Towe questioned what about cases where the county attorney is the only attorney in the area. He felt that maybe it should be made permissive instead of mandatory. Senator Turnage stated that the county attorney has no business in this and that is all there is to it. Rep. Conroy stated that most of these county attorneys have enough to do without having to fool around with these problems.

A vote was taken on the motion to be concurred in and the motion carried with Senator Van Valkenburg voting no.

DISPOSITION OF HOUSE BILL 225:

Senator Turnage moved that this bill be tabled. Senator Lensink said that it seemed to him that, with the amendment, it so changes the bill that you just might as well not put it on the books. Senator Towe stated that he had no problem with the bill if you take out that forty-eight hour notice. A vote was taken on the bill and the motion carried with Senator Brown voting no.

DISPOSITION OF HOUSE BILL 163:

Senator Towe moved that the bill be amended on page 1, line 17, by striking the new material "and the property subsequently disposed of". The motion carried unanimously.

Senator Towe moved that the bill be concurred in as amended. The motion carried unanimously.

DISPOSITION OF HOUSE BILL 224:

Senator Turnage stated that they do not know what they are getting into and that all they want is the child back, and he felt that they were asking for lots of problems. Senator Towe stated that he was afraid of it, too. Senator Lensink questioned

where does custodial interference leave off and kidnapping begin. Senator Towe stated that this has been a sticky problem and has changed over the last ten years. Senator Turnage said that the parents will often use the child as a club or a weapon to get even. Senator Brown said that they are forgetting about the problem of when a woman comes in and says that she is entitled to her child, that now her husband has gone to another state, and she feels that they will not honor her rights. He stated that, when somebody signs a custody award and they have a decree, what good is it if they can't get the kid back.

Senator Van Valkenburg stated that the arrest is too soon, that arrest is the decision of the county attorney, and he thought that arraignment would be better, and that arraignment is usually about two weeks after arrest.

Senator Turnage stated that arraignment would be better than arrest, and he suggested that they think about it overnight.

There being no further business, the meeting was adjourned at 11:20 a.m.

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

Date Wednesday, 25th Jan 1979

ROLL CALL

JUDICIARY COMMITTEE

46th LEGISLATIVE SESSION - 1979

Each Day Attach to Minutes.

Please sign & return to Secretary - Sunday

SENATE

the decision

COMMITTEE

BILL

VISITORS' REGISTER

DATE 2/25/19

Please note bill no.

the bill no.:
(check one)

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

Feb 48

NAME: William L. Ransie DATE: 2-28-79

ADDRESS: P.O. Box 1691 Helens

PHONE: 442-2220

REPRESENTING WHOM? ~~Mont. Sheriff's & Peace Officer's Association~~

APPEARING ON WHICH PROPOSAL: H.B. 163

DO YOU: SUPPORT? AMEND? _____ OPPOSE? _____

COMMENTS: The present law concerning the seizure, by the sheriff, of property covered by a security agreement, without any court action, should be repealed. This bill accomplishes this purpose. Under the present law, the sheriff becomes the power of the creditor. The sheriff has no way of knowing if the debtor is actually in default, so if he has a valid defense. Also, the sheriff may be required to seize a person's means of livelihood. The results of the seizure can be extreme. If the creditor has a good claim, he can seek an attachment. In such cases, the creditor will be required to convince the Judge that the debtor is in default and that the debtor does not have a good defense.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Exhibit A

January 23, 1979

225
Amendments proposed for Section 1, of House Bill No. 255:

(1) "A person commits the offense of permitting trespass by livestock if he intentionally causes one or more livestock to enter or remain unlawfully upon premises of another enclosed by a legal fence and if livestock remains for 48 hours after notification by the property owner."

This wording should take care of our organization's objections to the present wording. If anything further is needed please let me know.

Mona Teigen

Exhibit B

#146

BILLS TO BE HEARD BY SENATE JUDICIARY - WEDNESDAY, FEB. 28

HB 225: (Conroy)

Current law: under 81-4-215, an owner of livestock that trespasses on another's land is civilly liable for all damages.

Proposed bill: would add a criminal penalty for knowingly allowing livestock to enter or remain on another's land. The crime would be a misdemeanor and the criminal penalty would be in addition to civil liability.

HB 226: (Conroy)

Current law: current statutes say that the court may appoint counsel for a minor in divorce and guardianship proceedings. A Mantaro Supreme Court decision in 1977 interpreted these statutes to mean that in all cases the court has to appoint the county attorney.

Proposed bill: provides that county attorneys or deputy county attorneys can not be appointed in these cases.

HB 223: (Conroy)

Current law: 45-8-213 makes it a misdemeanor to interfere in the privacy in communications of others. Among the things prohibited are making obscene or annoying phone calls, recording others conversation without consent, reading other's mail, etc.

Proposed bill: would allow supervisory law enforcement personnel to control telephone communications to and from a person holding a hostage. The bill would exempt telephone employees acting under an order pursuant to this subsection from the offense of violating privacy in communications.

HB 224: (Conroy)

Current law: it is a criminal offense to interfere with the lawful custody of a child, incompetent, or other person. Such offense is a felony. Under current law, if the offender returns the person to lawful custody before trial, no offense is committed.

Proposed bill: shortens the time within which the offender can return the person to lawful custody without committing the offense of custodial interference. Under the proposed bill, the offender must return the person prior to arrest (rather than trial.)

HB 133: (Eudaily)

By Request of Attorney General

Proposed Bill: requires a state department or board to notify the attorney general when it initiates or intervenes in an action or appeals in an action.

HB 163: (Metcalf)

By Request of Attorney General

Current law: under 30-9-508, there are two methods a creditor can use to foreclose on personal property: (1) he can use the method prescribed for foreclosure of a mortgage on real property, which provides for prior advertising of the sale of the property for 30 days in a newspaper, posting notice, and serving personal notice on the debtor (71-1-2-24) or (2) if the security agreement contains a seizure clause, the creditor can have the sheriff seize and sell the personal property with reasonable notification to the debtor of the time and place of sale. 30-9-509 provides for commencement and postponement of sales made pursuant to 30-9-508. And, 30-9-510 provides for reports of such sales.

Neither 30-9-508, 30-9-509, nor 30-9-510 are contained in the official version of the uniform commercial code.

Proposed bill: repeals the second method of foreclosure on personal property described above in 30-9-508 and repeals 30-9-509 and 30-9-510. That is, the bill repeals the statutory authority for foreclosure by sheriff's sale under seizure clauses of security agreements between debtors and creditors. The bill amends 61-3-103 dealing with the filing of liens on motor vehicles to delete reference to 30-9-508.

HB 203: (Anderson)

Current law: the United States Constitution, Article IV, §1, requires courts of one state to give full faith and credit to the judgments of courts of other states. If a creditor sues a debtor in one state and wins a judgment and then tries to enforce the judgment in another state, the usual practice requires the creditor to commence a new action in the second state to enforce the foreign state's judgment. The debtor has a right to full procedural requirements in the second action, as he had in the first.

Proposed bill: adopts the Uniform Enforcement of Foreign Judgments Act. This Act allows a creditor to take a judgment obtained in one state to another state and have the judgment enforced in the latter state by the court as if it was a judgment of that itself. That is, the foreign judgment is filed with the court in the second state and is then enforced as any judgment of that court would be. This eliminates the necessity of a second

), continued

trial. The Act requires proper authentication before filing and provides for notice and stay of execution.

Section 1.	NEW.	Short title.
Section 2.	NEW.	Uniformity of interpretation.
Section 3.	NEW.	Definition of foreign judgment.
Section 4.	NEW.	Filing and status of foreign judgments
Section 5.	NEW.	notice of filing.
Section 6.	NEW.	When execution may be issued.
Section 7.	NEW.	Stay of execution.
Section 8.	NEW.	Right to bring action not affected
Section 9.	Amend 26-3-203	Effect of judicial record of another state.

STANDING COMMITTEE REPORT

February 23, 1973

MR. President:

We, your committee on Judiciary

having had under consideration House 163 Bill No.

Respectfully report as follows: That House 163 Bill No.

the third reading bill, be amended to read as follows:

1. Page 1, line 17.

Strike: "and the property subsequently disposed of"

And, as so amended,
BE CONCURRED IN

DO-PASSKK

STANDING COMMITTEE REPORT

February 28, 1973

MR. President:

We, your committee on Judiciary,

having had under consideration House Bill No. 133,

Respectfully report as follows: That House Bill No. 133,

BE CONCURRED IN
DO PASS

STANDING COMMITTEE REPORT

February 23, 1979

MR. President:

We, your committee on Juliciary.....

having had under consideration House..... Bill No. 225.....

Respectfully report as follows: That House..... Bill No. 225.....

BE CONCURRED IN
DO PASS

STATE PUB. CO.
Helena, Mont.

Everett R. Lensink Chairman *H.C.*