

MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE
March 27, 1981

The meeting of the House Judiciary Committee was called to order at 8:00 a.m. in Room 437 of the Capitol by Chairman Kerry Keyser. All members were present. Jim Lear, Legislative Council, was present.

SENATE BILL 475 SENATOR MAZUREK, sponsor, stated this bill's purpose is to adopt revisions to the Model Business Corporations Act recommended by the American Bar Association. There has been a great deal of work put into this bill. The bill does not have any impact on existing corporations. It does not require existing corporations to change anything or update anything. This only applies to new corporations or existing corporations that are changing. There is no reference or update needed of bylaws.

In 1967 the state passed the Montana Business Corporation Act and within three months it was obsolete. Most Montana corporations are closely held family operations. Sections 25, 29 and 38 codify practices in the state. This deals with transfer of shares and stock. The whole idea is groups of individuals who form a corporation want to have the benefits of a corporation but are restricted on stock. This would help that. Section 29 deals with shareholder control. The bill requires that the shareholder can control the corporation without having to set up a board of directors. The bill allows the board to enter into contracts without having it voted on by all the shareholders.

Par value and share value are done away with. The bill sets up a new standard for dividends. Many of the changes in the bill strike out capital surplus, par value and share value.

RONALD WYSE, University of Montana Law School, was in support of the bill. This bill has been a project of the State Bar for the last three years.

The Montana Business Corporation Act was outdated when it came into effect. The model act was effective January 1, 1969.

Section 16 deals with the board of directors of the corporation. Present law says the board of directors must manage the corporation. This will change it to management shall be exercised under the authority of the board. The second change is a provision in the model act. Shareholders would be able to exercise control where they would not before. Montana law does not have an explicit standard for the board of directors. A director must perform duties in good faith. Subsection 3 allows members of the board to rely on reports from accountants, outside counsel, etc. One of the unfortunate consequences is to get outside people to serve on a board. This is an important change.

In corporate matters if a director disagrees he can dissent. Section 23 is a new section from the model act. It concerns a provision on directors' conflicts of interest. Members of the board are likely to have other outside businesses. If the corporation is to enter other contracts with them as an outside business there is a problem. This gives full disclosure.

Section 26, subsection 3 regards agreements among shareholders. Present law has a provision with voting trusts. It is a means of controlling the vote. There must be some ability to control what the vote will be. It lacks flexibility and is limited to ten years. Subsection 3 states agreements against shareholders are valid. This is an important means of delegating control.

Section 25, information on subsection 3 deals with shareholder agreements. Difficulty may result if there are three shareholders in a closely held operation if two had 30% ownership and one had 40%. There could be a voting agreement between the two with 30%. The voting agreement did not have an agreement for proxy. This provision would permit irrelevant proxys. If a corporation hires an executive the person who is hired would want an employment contract.

Section 38 refers to restriction on transfer of shares. Of all the corporations in Montana 99% are closely held with less than ten shareholders. It is inconceivable you would have a closely held corporation without stockholders ability to sell. This permits stock transfer restrictions. It is a provision that came from New York statute.

Section 48 - several significant events in a corporation cannot occur unless the shareholders agree - including merger, sale of assets or liquidation. Present law requires that for any of these to take place the board must approve and then 2/3 of the shareholders must agree. It is possible that 1/3 would not agree. When you have the kind of event that needs shareholders approval you have consentors' rights. The change in section 48 simply expands where dissenters rights are given. Any time there is an amendment to this that affects rights, materially and adversely, it gives the board and shareholders the right to dissent.

Section 49 modifies the procedure to obtain the dissenter rights. Present law indicates for dissenters' rights you must go to the meeting and indicate your opposition. Within 10 days you must give written notice to have your shares purchased at cost. Most people do not understand this. The new section does not change the impact, it makes it more fair. When notice is written out you must send them copies of the statutes. You no longer will have the 10 day notice requirement. The corporation has an obligation to tell the people who did not vote of their dissenters' rights. Idaho has this law and has no problem at all. This would

eliminate unfairness. If the parties disagree as to the value, they have the option of going to court. If either party refuses to agree, attorney's fees can be charged. This is the sole remedy that the shareholder has.

Section 39 - historically par value was meaningful when the stock certificate was issued. That has changed and par value is meaningless. Attorneys now refer to no par or penny par. Provisions in the present code create difficulties. There might be some corporations that operated for 10-15 years where they might not have made money. A long term capital deficit occurs. Present law requires payment of dividends out of surplus. If the earnings are not adequate you have to go to things like capital surplus and change value. This change is in the model act and does away with par value.

Section 39 states the task in distribution is to see if the corporation meets its debts when they are due. The determination of real value is not limited to book cost. If you have the money, the board of directors in good faith gives assets to shareholders.

Section 37 eliminates treasury stock, which is stock issued and reacquired by the corporation. It makes it difficult to determine how many stocks are outstanding.

Section 40 deals with the merger, consolidation and share exchange of one corporation for a larger market. There are many tax benefits for share exchange. Present law has no provision for this. The board of directors approving the exchange and the shareholders must have 2/3 vote. This has been added to the model act. Subparagraph 1 is a provision on mergers, 2 is consolidation and 3 is a new part on exchange of shares.

Section 47 is a provision in Montana law that is not in the model act. One of the important events is the sale of assets in a corporation. This needs 2/3 vote of the shareholders approval. Subparagraph 5 permits the amendments of articles of the corporation so the board of directors can sell the assets. A majority vote is needed. This would change it from a 2/3 vote to a majority vote.

Section 17 of the bill allows the board of directors to be one or more people instead of the now required three. Professional service corporations only require one director. It is unfair to ask a relative to be a director just so you can comply with the law requiring three directors. He is taking on a great responsibility and is subjected to liability.

Section 35 is a provision that will not apply to many corporations immediately but will in the future. Large corporations have much paperwork which is a problem. There is no need to have ownership

reflected by the making of a stock certificate. There is a growing trend nationally to do this. It is in the model act.

Section 4 is a new section on the indemnification of directors and officers. Subsection 15 permits indemnification under two sets of circumstances; if he is judged not to violate a standard and if there are any other standards in the provision. This distinguishes between action of a director from the action of an individual because of a breach of contractual duty to the corporation. If the director is sued because he breached his duty to the corporation there should be a stricter standard than an agent who was involved in a transaction that resulted in a lawsuit. Attorney fees would be included. Prior to 1964 if you had inside information as to the site of a mineral field you would buy stock and tell others to also buy. In 1964 that was found to be a violation of federal law. Standards are set forth so it cannot be increased or lessened. It is a good standard that requires directors to show good faith conduct in the best interest of the corporation.

Section 29 permits in the articles of the corporation a provision allowing the shareholders to run the corporation directly. Present law requires at least one annual meeting of the board and one of the shareholders. Other decisions must be made at a special meeting with proper notice given. In small corporations, if you fail to go through the procedure you can lose limited liability. This procedure is not mandated but will allow provisions to eliminate the directors meeting.

WARD SHANAHAN, State Bar Business Section, stated the section has been studying this piece of legislation. The arrangement of the new code is more logical. The Montana arrangement has been brought to the attention of the American Bar Association. It will be more simple in the future to handle this. SHANAHAN supported the bill.

ALAN ROBERTSON, representing the Secretary of State, supported the bill. ROBERTSON gave EXHIBIT 1, a proposed amendment to the bill. The money goes to the general fund and not the Secretary of State's office. There is a need for revenue in the bill. Two dollars is the fee for changing an agent. A minimum of two certified letters must be sent out for this. This costs the state money.

A statement of intent is needed for the bill. The statement of intent from Senate Bill 161 would do the job.

There were no further proponents.

There were no opponents.

In closing, SENATOR MAZUREK stated by changing the fee it would allow the Secretary of State to set the fee. He agreed the statement of intent from Senate Bill 161 would be good.

REP. HANNAH asked about a corporation having much real estate and distribution. WYSE replied the decision to issue dividends is made by the board of directors. Shareholders will not try and force a distribution.

REP. HANNAH asked about the dissenter's rights. Why must the information be sent out twice? It is so cumbersome to the corporation. SHANAHAN replied there are many claims that corporations do not allow the stockholder enough voice in the operation. It is cumbersome but the American Bar feels it is necessary to meet the needs of the law. WYSE stated present law requires notice to shareholders. The stockholders must be informed they have dissenter's rights.

REP. SEIFERT asked about the liability of directors. WYSE replied this section on page 50, lines 5-10 establishes the liability of the director if he violates certain standards. The sense of the new language refers back to the standard of care. Lines 5-10 restates the present law that a director has a right to contribution.

REP. KEYSER asked why language on pages 47-49 were being stricken. SENATOR MAZUREK replied it is part of the original bill. It creates a standard of care outlining specific requirements about liability. It goes with section 16.

REP. DAILY stated he is involved in a small corporation as a director just for the sake of being a director for compliance with law. Would he be liable for suit. WYSE replied a lot of this is case law. He could be liable. Three directors are necessary along with having officers for the corporation. If you are a director you would be liable, if you were an officer you would not be directly liable. If a shareholder is an officer and runs under someone, he is liable. Limited liability goes to the investor. The liability of an officer is different. An officer is an agent. Directors do not receive a salary. Many people are officers to fill a requirement of law. If you are a director you have a duty to find out and know what is happening in the corporation.

REP. BENNETT asked about subsection (b) on page 39 concerning knowledge. WYSE replied paragraph 3 permits a director to reply on this. Knowledge is not defined in the code. It is by case law actual knowledge was that which a responsible person should know. If you are a director and outside accountants provide a financial statement saying the corporation is worth \$100,000 and you know that is wrong, you have an obligation to the corporation.

REP. BENNETT asked how difficult it is to prove that person is not acting in good faith. WYSE stated the burden is on the one claiming it was not done in good faith.

It was stated by SENATOR MAZUREK that sections not in the model act are section 25 - proxy on material, section 29 - shareholders control and section 38 - restrictions on shares.

HOUSE BILL 853 REP. SHONTZ, sponsor, told the committee the purpose of this bill is to revise the laws relating to distribution of the decisions of the Montana Supreme Court. This is at the request of the subcommittee on appropriations. There is not enough money to update the Montana Reports. There are normally two issues a year of the report from the Montana Supreme Court. The printing is two years behind schedule. The documents, thus being two years behind, are not as useful as they should be. One way to address the problem is for the state to print 300 copies of the books and distribute them at no cost to state agencies across Montana. This will reduce the number of free books. Attorneys would purchase the publication from the printer.

Proponent from the Supreme Court, MIKE ABLEY, stated the bill is a combination of effort by the fiscal analyst and himself. The current reports are out of date. Attorneys have no use for obsolete material. In most other states the attorneys purchase the most copies, but here the state does. There is much expense to the state because of this. ABLEY stated his office has contacted all the attorneys in the state and state agencies. If the material was brought up to date attorneys would purchase the books. County attorneys receive the publication free as does the clerk of the court in each county.

A number of publishers would be interested in printing the reports. If attorneys had to pay for these books instead of receiving them free they might determine they actually do not need them.

REP. EARL LORY, District 99, was in support of the bill. If attorneys need the books they will buy them. It will be of help to the budget of the state. The fiscal year '82 has a budget of \$82,000. If this bill is passed the money saved will help offset the budget.

There were no further proponents.

There were no opponents.

In closing, REP. SHONTZ stated the distribution of the books would be changed from the Secretary of State to the Supreme Court since the Supreme Court has actually been doing this. Most attorneys receive the Pacific Reporter, which is a current publication of the western states cases, instead of the state reporter.

REP. KEYSER gave the committee EXHIBIT 1, a proposed amendment by the State Auditor's Office. The sponsor was opposed to the amendments because every state agency could come in and want the same type of amendment.

REP. MATSKO asked the cost of the publication. It is \$30 per volume, four volumes per year.

REP. YARDLEY asked if there was any consideration given to not having the publication at all since it is covered in the Pacific. ABLEY stated the court considered eliminating it but if all state agencies had to purchase the Pacific Reporter there would be a big expense. The Pacific Reporter has many volumes per year. This would save money in the long run for the state agencies. REP. SHONTZ stated if the tool is up to date it will be useful. The only way to make it useful is to cut down on the free copies.

REP. HANNAH asked what would happen if the bill is not passed. REP. SHONTZ replied it would continue to get farther behind.

REP. HANNAH suggested eliminating the requirement that it be printed. That would not be within the scope of the title, it was replied. The money used to publish the books is a special line item of the supreme court's budget. REP. EUDAILY asked how many state offices are involved. ABLEY replied about ten elected offices which include the Office of Public Instruction, Governor, Secretary of State, State Auditor and Attorney General. REP. EUDAILY stated the supreme court will order 171 copies. How many will be available to the state office to buy? ABLEY stated they could purchase as many as they want to. There are allowances for about 15 extra. Normally the court keeps a certain supply because people need extra or some are damaged. The books could be purchased at cost from the printer.

REP. KEEDY asked about the distribution of five copies to the state library. ABLEY replied the state library and the state law library trade volumes back and forth. They have been requesting the same number for some time.

EXECUTIVE SESSION

SENATE BILL 419 REP. KEEDY moved do not pass.

REP. SEIFERT read some proposed amendments. EXHIBIT 2.

REP. HANNAH stated assuming the judges do not like to operate under constraints, the amendments indicate they want the judge out. REP. HANNAH said he was surprised at the opposition to the bill. He was against the amendments.

REP. HUENNEKENS also spoke against the amendments. It is difficult to select a chief judge. It would be hard to keep other judges working under one judge. There must be an opportunity for the Supreme Court to shift people in this position. Unless it is rotated judges will automatically decline it. This might produce fights in the courtroom.

REP. KEEDY was in favor of the amendments but opposed to the bill. This would affect only three of the 19 judicial districts.

REP. SEIFERT moved the amendments as in EXHIBIT 2. The motion resulted in a roll call vote. Those voting no were: KEYSER, BENNETT, CONN, EUDAILY, HANNAH, MCLANE, HUENNEKENS, SHELDEN and TEAGUE. Those voting yes were: SEIFERT, CURTISS, MATSKO, ANDERSON, DAILY, ABRAMS, KEEDY, YARDLEY and BROWN. The amendments failed 9 to 9.

REP. BROWN moved on page 3, lines 20 and 21 to strike subsection (d) in its entirety and to renumber the subsequent subsections. He felt the judges should not have to put up with secretarial help that they did not hire themselves.

REP. HANNAH opposed the motion. There might be a situation where in some districts there are two secretaries to three or more judges. The chief judge should have the authority to distribute staff as he chooses. REP. CONN agreed with the amendment. She felt it is counter productive to work with someone you cannot work well with.

The amendment carried with REP. HANNAH opposing.

REP. KEEDY moved do not pass as amended.

REP. YARDLEY stated district court judges are individually elected. By allowing the supreme court to decide who is best puts a strain on the working situation. REP. KEEDY stated if the committee considered language under existing law it indicates the intent of placing a judge and his office in Lake County. In Judge Wheelis's testimony he indicated the judges knew what the law is but having an office in Lake County is not what the legislature meant when the law was passed. To have the will of the legislature misconstrued by the judges is wrong and REP. KEEDY objected to that strongly.

REP. ANDERSON moved on page 2, line 14 to strike "1" and insert "a", strike "from those" and insert "with the past year's records of least caseloads" and on line 15 to strike "elected". REP. ANDERSON felt many judges have nothing to do. This person would help with the administrative duties on page 3 of the bill. Some of the judges are doing all the work while others are not doing

their share. The amendment failed with ANDERSON, DAILY and HANNAH voting yes.

The motion of do not pass as amended resulted in a roll call vote. Those voting yes were: KEYSER, SEIFERT, BENNETT, EUDAILY, IVERSON, MATSKO, MCLANE, ABRAMS, SHELDEN, KEEDY, YARDLEY and BROWN. Those voting no were: CONN, CURTISS, HANNAH, ANDERSON, DAILY, HUENNEKENS, and TEAGUE. The motion carried 12 to 7.

SENATE BILL 113 REP. HUENNEKENS moved do pass.

REP. CURTISS wondered if there was a compelling need for this. REP. CONN believed there was. Although redistricting would be a better option there is not enough judges and time to take the cases to court. Caseloads will increase more. REP. HANNAH agreed with REP. CURTISS. The attorney general and legal system will not seriously look at redistricting if judges are added constantly. He was against the concept.

REP. CONN replied it would be punitive to the people. People with real needs and cases end up not going to court. This will not force judges to give anything.

REP. YARDLEY supported the motion of do pass. There is a much more serious need for a judge in Helena than there was in Sydney. If this is put off the crisis will really build up and a judge will have to be appointed. This way one will be elected.

REP. HUENNEKENS stated the increased caseloads have placed pressure on the system and it has never forced the attorney general to re-district. There is no guarantee it will work. It is, however, ridiculous to punish the citizens to not have a fair and prompt trial.

REP. KEYSER stated there have been studies already dealing with redistricting that have shown it to be a futile effort. Counties are so jealous that they will not go for it. Attorneys will not speak against the judges. All cases filed against the state are filed in Helena. The total workload does not show that the judges are lazy.

REP. KEEDY was opposed to the bill. It will just put another judge in the state. It is a patchwork approach to solve the problem. No one will be serious in redistricting. There is plenty of evidence that this court needs more help but this is not the way to go about it. This is the same claim from other parts of the state. The only time the legislature is going to get serious is to draw a line

and refuse to put another bandaid on the wound. REP. HUENNEKENS stated the lack of the final bandaid might make the patient bleed to death. He stated he served on the committee in 75-76 that made the study. He disagreed with REP. KEEDY's opinion. We should take care of the problem now and try to change it later.

REP. KEYSER stated if we wait the people will suffer and in two years the caseload will be even greater. REP. MCLANE asked how do we know it will improve with the new judge. There was no way of knowing the answer to the question.

REP. EUDAILY stated they could use retired judges and assign them to the cases. If a new judge is elected by passage of this bill the position will be there forever.

It was stated by REP. HANNAH that it is 30 miles to Boulder. The judge there does not have a heavy caseload at all. There is an assumption that a new judge will create quicker service.

The idea of redistricting is not the salvation of the system, stated REP. ANDERSON. Maybe it is the body of laws that we add year after year that we clutter the courts.

REP. HUENNEKENS stated there is a national phenomena with going to court. We are facing the same thing in Montana.

REP. KEYSER stated the judge in Boulder is very busy traveling to Dillon and Virginia City and he does not have time to come to Helena to help with their caseload.

REP. IVERSON stated people could study this a lot but it will not solve it by redistricting. Another judge should be added.

The motion of do pass resulted in a roll call vote. Those voting yes were: KEYSER, BENNETT, CONN, CURTISS, IVERSON, MATSKO, DAILY, ANDERSON, ABRAMS, HUENNEKENS, SHELDEN, KEEDY, TEAGUE, YARDLEY and BROWN. Those voting no were: SEIFERT, EUDAILY, HANNAH and MCLANE. The motion carried 15 to 4. REP. HUENNEKENS was assigned to carry this bill on the House Floor.

SENATE BILL 380 REP. SEIFERT moved do not pass.

Exhibit 4 was given to the committee.

REP. BROWN moved to amend page 5, lines 2-21 striking sections 6 and 7 in their entirety. The amendment carried unanimously.

REP. HANNAH moved to amend page 1, line 17, all of subsection 1 and to strike all reference to winery. He stated it is important

that wine distributors have a basis for a contract. He agreed that this would create a monopoly situation that if someone else qualified financially and could buy a franchise this would eliminate them from doing so.

REP. CONN felt the amendment would remove all of the bill. REP. HANNAH replied he was not trying to kill the bill. The winerys do not have strong contract protection with the brewers. Section 1 indicates he is the only one who could have a winery. JIM LEAR stated it suggests that this is an exclusive market area that is set up. REP. HANNAH withdrew his amendment. REP. YARDLEY stated he would have supported the amendment as he is against the bill.

REP. HANNAH moved to delete winery throughout the bill. The amendment failed with YARDLEY, BROWN, HANNAH, MCLANE, EUDAILY and CONN voting yes.

It was moved do not pass as amended by REP. SEIFERT. The motion carried with IVERSON, CURTISS, MATSKO, and KEYSER voting no. REP. TEAGUE abstained.

SENATE BILL 468 REP. YARDLEY moved do pass. REP. YARDLEY moved the amendment raising the fee from \$5.00 to \$10.00. The amendment carried with REP. KEYSER and REP. KEEDY opposing.

REP. CONN moved to reconsider action on the amendment. The motion carried. REP. KEEDY stated he was against the amendment because it has no connection with the bill. REP. IVERSON agreed.

REP. YARDLEY stated he still supports the amendment. It is not changing the intent of the bill. REP. EUDAILY stated this bill was by request of the Senate Judiciary Committee and these amendments were left out.

REP. MATSKO felt the amendment was a rider to the bill and it has nothing at all to do with the intent of the bill.

REP. YARDLEY moved the amendment be adopted. The motion resulted in a roll call vote. Those voting yes were: CURTISS, EUDAILY, DAILY, ABRAMS, SHELDEN, TEAGUE and YARDLEY. Those voting no were: KEYSER, CONN, HANNAH, IVERSON, MATSKO, MCLANE, ANDERSON, HUENNEKENS, KEEDY and BROWN. The amendment failed 10 to 7.

REP. KEYSER moved to amend the title to reflect "first class counties" after "counties" and any other place in the bill as needed. REP. YARDLEY was against the amendment. This is a consumer bill in a way. In district court you have to have an attorney.

REP. KEYSER stated the district court in his county is very busy and not underloaded. REP. CURTISS stated the Association of Counties

came in to ask for an increase of filing.

The amendment failed with BROWN, ANDERSON, CURTISS, MCLANE, KEYSER and SEIFERT voting yes.

REP. CURTISS moved to reconsider the filing fee amendment. The motion failed with CURTISS, DAILY, YARDLEY and TEAGUE voting yes.

The motion of do pass resulted in a roll call vote. Those voting yes were: BENNETT, CONN, EUDAILY, HANNAH, IVERSON, MATSKO, MCLANE, ANDERSON, DAILY, ABRAMS, HUENNEKENS, SHELDEN, KEEDY, TEAGUE and YARDLEY. Those voting no were: BROWN, KEYSER, SEIFERT and CURTISS. The vote was 15 to 4 in favor of do pass. REP. YARDLEY was assigned to carry the bill on the House Floor.

SENATE BILL 479 REP. SEIFERT moved do pass.

REP. KEEDY was against the bill. He stated if existing law needs to be amended it should. This is all new statute.

JIM LEAR stated 70-21-309 is the most recent enactment of this nature. There is nothing in the history that shows an enactment that was not codified. LEAR stated he did not know why it was not amended in favor of creating a new section.

REP. HUENNEKENS stated it was probably technical difficulties. Each year this has been validated rather than going back to the clerk's office.

REP. YARDLEY suggested passing the bill for the day. REP. SEIFERT withdrew his motion. The committee decided to delay action on the bill.

SENATE BILL 253 REP. BROWN moved do pass.

REP. KEEDY felt if an infant was abandoned a waiting period of six months would have to go by before anything could be done with the child. REP. CONN stated no permanent action would take place for six months after the abandonment of the child. REP. KEEDY stated the harm to the child's welfare was that the department would have the authority to take custody and decide the welfare of the child. REP. CONN replied nothing permanent would be decided until six months. Every effort would be given to find the father of the child to give him custody. REP. HUENNEKENS stated this is just a definition establishing the child's health and welfare.

REP. SEIFERT questioned what was wrong with the old language. REP. BROWN stated because case law is based on this it is too vague requiring the six month waiting period. This language

would make it official. REP. HANNAH stated it would be much safer to have the new language rather than the subjective language. If they have protection for the emergency cases we are much better off to have a well defined period of time. There is a major difference in the language and the change. REP. HUENNEKENS agreed that it defines what a child's welfare and health are.

REP. BROWN stated part of the problem is that if existing language in the bill in addition to the new language is left in, in those cases in which they definitely believe parents are not coming back that would allow them to do something, rather than to wait for six months.

REP. BROWN moved to leave the language in adding "or by". The motion carried with REP. HANNAH voting no.

REP. YARDLEY moved to add "or" on page 4, line 12, after "purposes". REP. CURTISS stated if this amendment passes will criminal provisions apply to other sections. REP. YARDLEY replied just 2b. It broadens the basis for harm. Purpose of the "or" might be exploitation that is not in the section. JIM LEAR stated if it is left as it is, it may be leaving open a constitutional attack on an overbroad statute. The committee should either strike the other language or strike the "or".

REP. KEEDY made a substitute motion to strike the underlined language on lines 12 and 13 in subsection 1.

The amendment carried with EUDAILY, MATSKO, and CURTISS voting no.

It was moved do pass as amended by REP. BROWN. The motion carried with CURTISS, HANNAH, IVERSON and MCLANE voting no.

SENATE BILL 479 JIM LEAR stated there is noting wrong with changing the date and reinserting it. It is not necessary to have a new section. If the committee is in favor of the provision, 70-21-309 should be inserted and '73 should be changed to '81.

REP. KEEDY moved to insert "technical" after "any" on line 18, page 1. It is in the title and should be reflected in the bill. The motion carried.

REP. YARDLEY moved to amend the bill inserting 70-21-309 and changing the year to '81. The amendment carried.

REP. KEEDY stated if it goes in in October then we are affecting someone who has a cause of action prior to that date. It if was

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prior to October 1 then on September 30 no action to be pending before October 1 for the conveyance. JIM LEAR stated that is why two different dates are in the existing statute.

REP. KEEDY moved to reconsider action on the amendment. The motion carried.

REP. KEEDY moved to change the first date to January 1, 1981 and to leave the rest of the amendment as is. The motion carried unanimously.

The motion of do pass as amended was made by REP. SEIFERT. The motion carried unanimously.

REP. KEEDY was assigned to carry the bill.

SENATE JOINT RESOLUTION 20 REP. HUENNEKENS moved do pass. The motion carried unanimously.

SENATE BILL 475 REP. HANNAH moved do pass. The motion carried with BROWN and MATSKO voting no.

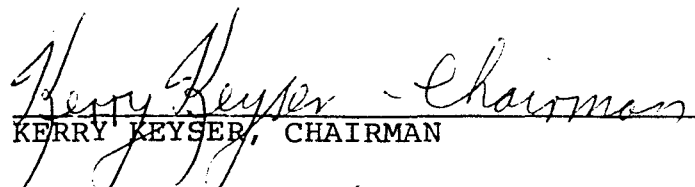
REP. YARDLEY moved the statement of intent from Senate Bill 161 be adopted. EXHIBIT 4. The motion carried.

HOUSE BILL 853 REP. BROWN moved do pass.

REP. BROWN stated he was against the amendments that were proposed during the meeting.

The motion of do pass carried unanimously.

The meeting adjourned at 12:15 p.m.


KERRY KEYSER, CHAIRMAN
mr

PROPOSED AMENDMENTS.B. 475

P. 122, strike line 8 through the end of section 59.

Insert in place thereof the following:

"35-1-1202. Secretary of State. Authorized and Required to Establish Fees Commensurate With Costs. The secretary of state is authorized and required to set filing fees reasonably related to the costs of processing the applications and certificates. The secretary of state may establish fees for filing articles of incorporation, articles of amendment, issuing a certificate of amendment, restated articles, issuing a restated certificate of incorporation, articles of merger or consolidation, issuing a certificate of merger or consolidation, filing an application to reserve a corporate name, a notice of transfer of a reserved corporate name, a statement of change of address of registered office or change of registered agent, filing a statement of the establishment of a series of shares, filing a statement of intent to dissolve, filing a statement of revocation of voluntary dissolution proceedings, filing articles of dissolution and issuing a certificate of dissolution, filing an application of a foreign corporation for a certificate of authority to transact business in this state and issuing a certificate of authority, filing an application of a foreign corporation for an amended certificate of authority to transact business in this state and issuing an amended certificate of authority, filing a copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to transact business in this state, filing a copy of articles of merger of a foreign corporation holding a certificate of authority to transact business in this state, filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, filing an annual report and filing any other statement or report."

PROPOSED AMENDMENT TO HOUSE BILL 853:

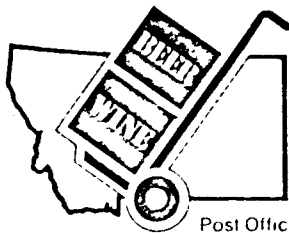
Page 5, line 18
Following: "states"
Strike: "."
Insert: ";

Page 5, line 19
Following: line 18
Insert: "(i) to the state auditor, 1 copy."

A chief judge shall hold his position until:

- (a) He resigns his position as chief judge, or retires from office as a district court judge, or
- (b) is removed from his office as chief judge by Order of the Supreme Court, or
- (c) in the case of multijudge districts with more than two judges, by the unanimous written vote of all judges, with the exception of chief judge, in the district.

Upon removal of a chief judge, in the manner herein provided, the Supreme Court shall appoint a new chief judge from the remaining judges in the district."



Montana
Beer & Wine
Wholesalers
Association

Post Office Box 124 • Helena, Montana 59601 • Telephone (406) 442-4451

Exhibit 4

March 26, 1981

Rep. Kerry Keyser, Chairman
House Judiciary Committee
Room 437, State Capitol

Re: Senate Bill 380

Dear Mr. Chairman:

Following the committee hearing on the wine distributor bill, several members indicated that they could support the bill with section 6 deleted. Section 6 is the only part of the bill which would mandate exclusive territorial franchises from wineries. Removing that section from the bill altogether would take out the antitrust law issues debated at the hearing. The only other place the bill mentions territory is in section 1; that is a requirement that the territory a distributor is to cover be described in the winery contract and it does not require that the territory be exclusive.

Given the uncertain state of the law on territorial allocations, the complexity of the amendments I had proposed on section 6, and the timing of the legislative session, I feel that the wholesalers could go along with dropping section 6. I would ask the committee to consider amendments 4 and 5 on my pink sheet -- the 500-case exemption on the agreement-filing requirement. This remains important to some wholesalers.

Sincerely yours,



Roger Tippy

RT:ah
cc: Committee Members

Exhibit 5

March 27, 1981

STATEMENT OF INTENT

SENATE BILL 475

House Judiciary Committee

A statement of intent is required for this bill because section 59, as amended by the House Judiciary Committee, would grant the secretary of state the authority to adopt rules establishing fees for filing documents and issuing certificates required by Title 35, chapter 1. Rules are to be adopted under the Montana Administrative Procedures Act. The documents and certificates for which filing fees may be charged under those rules shall include those specifically mentioned in section 35-1-1202 prior to amendment by Senate Bill 475 and any others required under Title 35, chapter 1. The rules must allow the filing and billing for filing fees to be accomplished by mail.

First adopted by the House Judiciary Committee on the 27th day of March, 1981.

VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

BILL HB 853

Date March 27, 1981

SPONSOR SHONTZ

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

SENATE

BILL 475

Date 3/27/81

SPONSOR Mazurek

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.