

MINUTES OF MEETING  
SENATE JUDICIARY COMMITTEE  
January 27, 1981

Page 1.

The fourteenth meeting of the Senate Judiciary Committee was called to order by Mike Anderson, Chairman, on the above date in Room 331, at 10:00 a.m.

ROLL CALL:

All members were present except Senator O'Hara, who was excused.

CONSIDERATION OF SENATE BILL 33:

AN ACT TO GENERALLY REVISE AND CLARIFY  
THE LAWS OF THE STATE OF MONTANA IN  
ACCORDANCE WITH THE MANDATE TO THE  
CODE COMMISSIONER CONTAINED IN  
SECTION 1-11-204, MCA.

A general explanation of the proposed changes may be found in the green pages accompanying Senate Bill 33, which has been marked Exhibit C and attached to the minutes of January 21, 1981.

Lee Heiman, Legislative Council staff member, presented the committee with a joint resolution (marked Exhibit A and attached to these minutes) relative to the rules of evidence (Sections 157 through 179 of Senate Bill 33), discussed during the January 21 meeting. Senator B. Brown agreed to consult with the county attorneys before the committee acts upon the joint resolution. Additionally, regarding the holiday provisions for public employees, all of Section 15 on pages 14 and 15 of this bill will be stricken and included in another bill being considered elsewhere. Lee Heiman suggested that the committee consider inserting the words "Board of Investment" in place of the "department of community affairs" on lines 1 and 2 of page 160, or putting the same change in another bill, as he questioned why the DCA should be involved in a job that really belongs to the Board. He also explained that the words "personal representative" in line 25, page 163, and lines 23 and 24 on page 165, is also meant to include public administrators of estates, as they are appointed to serve as personal representatives.

Katherine Orr, Legislative Council staff member, then took the committee through the portions of the bill that she had worked on. She felt that the committee should possibly add "13-12-207" in the references on page 45, lines 24 and 25, and again on page 46, lines 7 and 8. Senator S. Brown

moved that "13-12-207," be inserted following "by" on page 45, line 24; and again on page 46, line 7. This motion passed unanimously.

Senator Mazurek questioned the changes made in Section 29-51-1217 on page 188, lines 6 and 7, and stated that he felt the reference to "1979" should be left in. Katherine Orr explained that the section had been repealed by Chapter 685 of the session laws of 1979, and so was originally an incorrect reference.

Senator S. Brown felt that the addition of the term "person" on line 14 of page 218, and again in subsection (5) on page 219 represented a substantive change in the law. After researching the matter, Ms. Orr agreed that "person" should be deleted wherever it appears in Section 239 and the words "political entity" by reinstated.

David Niss explained his contribution to the changes dealt with in this bill, dealing mostly with the deletion of obsolete language dealing with civil procedure.

Senators Crippen and Mazurek felt that lines 5 through 9 on page 81 should be left in their original form, even though they may be redundant. Senator Mazurek moved that the entire Section 88 be removed from this bill, to be preserved as it now stands in present law. The motion failed. Senator Crippen then moved to delete subsection (3) of Section 88 and to reinstate the current language of that subsection. The motion carried.



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Senator Anderson  
Chairman, Judiciary Committee

ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date 1/27/81

NAME	PRESENT	ABSENT	EXCUSED
<del>Anderson, Mike, Chr. (R)</del>	✓		
O'Hara, Jesse A. (R)			✓
Olson, S. A. (R)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Tveit, Larry J. (R)	✓		
Brown, Steve (D)	✓		
Berg, Harry K. (D)	✓		
Mazurek, Joseph P. (D)	✓		
Halligan, Michael (D)	✓		

Each day attach to minutes.

SENATE JUDICIARY COMMITTEEBILL SB 33

VISITORS' REGISTER

DATE 1/27/81

Please note bill no.

NAME

REPRESENTING

BILL #

(check one)  
SUPPORT OPPOS

Lee Heiman

Legislative Council

SB 33

David Wagner

Martha's Vineyard C &amp; T

SB 33

C. W. Wenzel

State Bar

SB 33

Katherine Orr

Legislative Council

SB 33

Doris Dowling

"

"

SB 33

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

(14)

NAME: Lee Heiman DATE: Jan 27, 1981

ADDRESS: Rm 117, Cap. bldg.

PHONE: 444-3064

REPRESENTING WHOM? Legislative Council

APPEARING ON WHICH PROPOSAL: SB 33

DO YOU: SUPPORT? \_\_\_\_\_ AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENTS: See attached green sheet, Titles 7, 7, 26,  
33, 37, and 53. Proposal of ~~the~~ joint resolution  
on statutory provisions on evidence to Supreme Court.

NAME: Kathlene Or DATE: Jan 27, 1981

ADDRESS: 933 N. Park Ave.

PHONE: # 442-7327 or w 449-3064

REPRESENTING WHOM? Code Commissioner

APPEARING ON WHICH PROPOSAL: SB 33

DO YOU: SUPPORT? X AMEND?        OPPOSE?       

COMMENTS: I am explaining amendments  
under Title 5, 13, <sup>16</sup> 39, 75, 76, 85

NAME: James H. Lear DATE: 6/27/81

ADDRESS: P.O. Box 90, East Helena, Mt.

PHONE: 227-8079

REPRESENTING WHOM? Code Commissioner

APPEARING ON WHICH PROPOSAL: SB 33

DO YOU: SUPPORT? X AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENTS: I am explaining amendments to sections  
in Titles 3, 45, 46, & 61

Exhibit A

\_\_\_\_ JOINT RESOLUTION NO. \_\_\_\_

INTRODUCED BY \_\_\_\_

BY REQUEST OF THE SENATE JUDICIARY COMMITTEE

A JOINT RESOLUTION OF THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE MONTANA SUPREME COURT TO PREPARE PROPOSED LEGISLATION FOR CONSIDERATION BY THE 48TH LEGISLATURE TO RECONCILE CONFLICTS BETWEEN THE MONTANA RULES OF EVIDENCE AND THE STATUTORY PROVISIONS ON EVIDENCE CONTAINED IN THE MCA.

WHEREAS, the Montana Rules of Evidence were adopted in 1977 by order of the Montana Supreme Court as rules of practice under its authority in Article VII, Section 2, Montana Constitution; and

WHEREAS, there are numerous statutory provisions in the MCA regarding evidence, particularly in Title 26, chapters 1 through 3; and

WHEREAS, the statutory provisions on evidence, which predate the Rules of Evidence by many decades, in many cases conflict with the Rules of Evidence and should be reconciled with the Rules of Evidence; and

WHEREAS, the Montana Supreme Court would be greatly affected by changes in the statutory provisions on evidence because of the impact of the changes on the practicing bar and the close connection between the statutory provisions on evidence and the Supreme Court promulgated Rules of Evidence; and

WHEREAS, the Montana Supreme Court has continuing contact with the practicing bar of Montana through the authority granted it by Article XII, section 2, of the Montana Constitution, through the State Bar of Montana, and through the University of Montana School

(14)



of Law, and these contacts may be used to effectively solicit ideas for necessary changes and to insure notice to the bar regarding the effects of the proposed changes; and

WHEREAS, the Montana Supreme Court Commission on Rules of Evidence, which prepared the Montana Rules of Evidence, is still in existence and has in its membership the proper persons to effectively study and prepare suggested legislation on evidentiary conflicts in the law, the end product of which could be complementary to the Montana Rules of Evidence; and because the Montana Rules of Evidence have been in effect for 4 years, this would be an advantageous time for the Commission to recommend substantive changes in statutory evidence provisions to make Montana's provisions on evidence modern, effective, and efficient.

NOW THEREFORE BE IT RESOLVED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That in order to reconcile conflicts between the Montana Rules of evidence and the statutory provisions on evidence contained in the MCA, the Montana Supreme Court is requested to:

- 1) study the conflicts between the Montana Rules of Evidence and current statutory provisions on evidence;

- 2) draft legislation for the 48th Legislature to eliminate such evidence conflicts and in connection therewith to propose any substantive changes in statutory provisions on evidence it considers advisable; and

- 3) prepare any reports or commission comments it feels would be necessary to explain the suggested legislation.

BE IT FURTHER RESOLVED; that the Secretary of State send a copy of this resolution to the Chief Justice, Montana Supreme Court.