

MINUTES OF MEETING  
SENATE JUDICIARY COMMITTEE  
February 13, 1981

The twenty-seventh 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.

CONSIDERATION OF SENATE BILL 272:

GENERALLY REVISING THE PROCEDURES FOR  
THE ISSUANCE OF A WARRANT FOR DISTRAINT  
BY THE DEPARTMENT OF REVENUE.

This bill was introduced by Senator Mazurek, District 16, Helena, at the request of the Department of Revenue. He turned the presentation over to the drafter of the bill, Larry Weinberg.

Mr. Weinberg presented a written discussion of the bill (marked Exhibit A and attached to these minutes), and stated that the purpose is to make a hearing mandatory after a warrant of distraint has been issued for collection of unpaid taxes. The Department of Revenue considers the bill a mechanism to protect the taxpayer against an unfair tax, while at the same time providing the Department a way of collecting these taxes.

John Alke, representing Montana-Dakota Utilities, said that he objected to the bill in its present form. He feels that because HB 416 has been introduced, in addition to Section 3 of this bill, the Department is trying to secure the ability to immediately seize funds of any person allegedly owing taxes to the State of Montana without first holding a hearing. On behalf of the Montana Bankers Association, Mr. Alke said that the banks are afraid that bank accounts could be seized under the terms of this bill.

Jim Hughes, representing Mountain Bell, agreed with the former opposing testimony.

Mr. Weinberg said that if the withholding tax question is a problem in the bill, the Department of Revenue would work with the committee on correcting it.

Senator Anderson asked how much annual revenue is lost to

the state each year from the individuals and companies who are the target of this bill. Senator O'Hara agreed, and wondered whether, in fact, enough of a problem exists to warrant the bill. Mr. Weinberg stated that contractors are the specific problem.

Senator Mazurek suggested rather than killing the bill, that Mr. Alke work with him and the Department of Revenue to solve existing problems in it. Mr. Alke tentatively agreed to, if HB 416 were dropped.

CONSIDERATION OF SENATE BILL 369:

IMPLEMENTING CONST. AMEND. #9 REGARDING  
CONFIDENTIALITY OF PROCEEDINGS BEFORE  
THE JUDICIAL STANDARDS COMMISSION.

Senator Ochsner, District 26, presented the bill on behalf of the court judges, and read the bill aloud. A witness who was supposed to have presented testimony on the bill failed to show up, so Mike Abley, of the Supreme Court, explained that the bill is an attempt to develop a happy medium between current law and the provisions of SB 288.

Senator S. Brown moved that the bill be held to see if the witness would appear later, and that the committee allow him to speak if he arrived. This motion received unanimous acceptance.

CONSIDERATION OF SENATE BILL 267:

REVISING ADOPTION, RELINQUISHMENT AND  
PLACEMENT OF CHILDREN FOR ADOPTION LAWS.

Senator Mazurek introduced the bill at the request of the Social and Rehabilitation Services. The principal purpose is to get some control over private adoptive placements.

Burt Annin, attorney with the Department of Social and Rehabilitation Services, offered amendments (marked Exhibit B and attached to these minutes).

John Frankino, Director of the Catholic Social Services of Montana, spoke in support of the bill with the amendments.

Randy Gray, representing the Lutheran Social Services of Montana, presented statistics which supported the bill. He said that society's standards have changed greatly so that more unwed mothers are keeping their children; and the resulting shortage of adoptable babies has led to an increase in the "black market" baby problem. He felt that this bill

would encourage the birth mother to seek counseling before relinquishing her child. He endorsed the bill with its amendments.

Betty Bay, Program Manager for Adoption for the S.R.S., supported the bill.

Kenneth Gjerde, representing the Lutheran Social Services in Great Falls, spoke in support of the bill and spoke of the importance of the medical record established for a child, including family illnesses, inherited traits, etc.

CONSIDERATION OF SENATE BILL 245:

GENERALLY REVISING THE LAWS RELATING  
TO HEALTH AND THE FAMILY.

The bill was introduced by Senator Mazurek at the request of the Department of Health and Environmental Sciences. He took the committee through the changes being sought in the bill.

John Wilson, Chief of the Bureau of Records and Statistics for the Department of Health and Environmental Sciences, presented written testimony (marked Exhibit C and attached to these minutes), and showed the committee the poor condition of the current records. He said that the added revenue from the increase in the fee for obtaining a certified copy of a birth certificate could be used in keeping more usable, accurate records.

In closing, Senator Mazurek pointed out that the Department of Health had asked that the two dollar fee be increased to three dollars; but the Governor had changed the request to five dollars. He felt this issue could be negotiated.

CONSIDERATION OF SENATE BILL 209:

PROVIDING FOR THE PAYMENT OF COURT  
JUDGMENTS IN PERIODIC INSTALLMENTS.

Senator Mazurek introduced the bill at the request of a member of the National Conference of Commissioners of Uniform State Laws. He presented Exhibit D, attached to these minutes, as written testimony, and stated that the purpose is to provide for the payment of large damage awards over the course of a person's life rather than in a large single settlement. The drafter of the bill did not appear for this meeting.

Mike Meloy, opposing the bill on behalf of the Montana Trial Lawyers Association, stated that the bill is confusing and complicated, and uses a Uniform Act which was designed to

be used in all the states and is not particularly helpful in Montana because of differences in wording. He said that there would be a problem marketing the annuity, which is based on the fluctuating value of 52-week money market certificates.

Don Molloy, Billings trial attorney, opposed the bill because it would inject procedural decisions which would take additional time from the judges' already crowded dockets. He added that this type of structured settlement is already an option under current law, so there is no need for the bill.

Greg Munro, Billings trial lawyer, opposed the bill partly because it does not protect the injured party's estate if he should die before all the payments have been made.

#### DISPOSITION OF SENATE BILL 209:

Senator Mazurek moved that the bill DO NOT PASS. His motion carried unanimously.

#### DISCUSSION OF COMMITTEE BILLS:

Senator Anderson discussed a proposed committee bill regarding raising the limit of small claims which can be heard in justice court from \$1,500 to \$3,500. Senator Berg moved that the matter be introduced as a committee bill. His motion carried over Senator Olson's objection.

Senator Anderson next brought up the matter of a joint resolution requiring the Supreme Court to prepare legislation to reconcile conflicts regarding Montana's rules of evidence. Senator S. Brown moved that this matter be introduced as a committee bill. His motion carried, and Senator Crippen agreed to carry the bill.

Senator S. Brown brought up a matter on behalf of William Romine, representing the clerks and recorders, relative to validation of documents that may have been improperly executed or recorded. His motion that this matter be introduced as a committee bill passed unanimously. Senator S. Brown then asked David Niss if this could be done without having to do it each year.

The next matter to be considered as a committee bill concerned an agreement for halfway houses and their programs. Senator S. Brown moved that this matter be undertaken by the committee; his motion carried; and Senator Anderson agreed to carry the committee bill.

The final possible committee bill originated from Red Lodge and would have amended the law to specifically allow county attorneys to handle misdemeanor cases in city courts.

Senator Olson felt that the time was running too short to try to bring up this matter, and Senator O'Hara agreed that the committee already has enough to handle. Senator Olson moved that the committee do not accept this matter. Senator Mazurek made a substitute motion that the committee do accept the matter, and that he would carry it on the floor. With a three-quarter vote necessary, Senator Mazurek's motion failed, with Senators Olson, Anderson, and Halligan voting against it.

A handwritten signature in cursive script, reading "Mike Anderson". The signature is written in dark ink and is positioned above a horizontal line.

Senator Anderson  
Chairman, Judiciary Committee

ROLL CALL

JUDICIARY COMMITTEE

471 LEGISLATIVE SESSION - - 1981

Date 2/13/81

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.

ADDRESS: 406 Fuller

PHONE: 447 - 6048

REPRESENTING WHOM? MDY ? Went Bonker Ass

APPEARING ON WHICH PROPOSAL: SB - 778

DO YOU: SUPPORT? \_\_\_\_\_ I MEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENTS: \_\_\_\_\_

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY



NAME: J. Burt Annin DATE: 2-13-81

ADDRESS: P.O. Box 4210

PHONE: 449-5622

REPRESENTING WHOM? SRS

APPEARING ON WHICH PROPOSAL: SB 267

DO YOU: SUPPORT? ☒ AMEND? ☒ OPPOSE? ☐

COMMENTS: Written amendments  
attached.



NAME: Rodolfo Gran DATE: 2-13-81

ADDRESS: P.O. Box 2885

PHONE: 727-2311

REPRESENTING WHOM? Lutheran Social Services of Maryland

APPEARING ON WHICH PROPOSAL: SA 267

DO YOU: SUPPORT? X I MEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENTS: St-conv. endorse this bill  
as allowing judicial scrutiny  
of private adoption

NAME: Betty Bay DATE: 2-13-81

ADDRESS: Walt Gabel with Box 4210 Helena

PHONE: 235-4377 work - 449-3865

REPRESENTING WHOM? S.R.S.

APPEARING ON WHICH PROPOSAL: \_\_\_\_\_

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

COMMENTS: testimony attached

TESTIMONY ON SENATE BILL NO. 267

An Act to generally revise the laws relating to adoption and to amend the laws relating to relinquishment and placement of children for adoption by their parents without Agency involvement.

The Department of Social and Rehabilitation Services requested introduction of this Bill. The Bill is supported by the licensed Child Placing Agencies in the State. The purpose of the Bill is to insure that the rights of all those involved in an adoption are protected. The rights of children placed for adoption by their parents without Agency involvement must be protected. Currently SRS is ordered to investigate all adoptions upon the filing of a petition to adopt. The petition to adopt could be filed at one week, one month or one year after the child is placed by the parents in the home of their choice. The appropriateness of the child for placement, the suitability of the home for the child and insurance of rights of all parties should be investigated prior to placement of the child into the home. For this reason, parents will be required to file a petition in District Court stating their decision to make an adoption plan for their child. The Report to the Court by SRS or a licensed child placing agency will advise that rights are insured. The requirement may be waived when the child to be adopted is a member of the extended family of one of the petitioners or is a stepchild of the petitioner.

The second part of the Bill clarifies language in the Adoption Act currently in use. This fulfills a need for definition of adoption terms used in the current statute.

Betty Bay  
S. R. S.

NAME: KENNETH G JERDE DATE: 2/13/81

ADDRESS: 317 41ST ST. SOUTH GREAT FALLS MONT

PHONE: 761-4341 WORK 761-2012 HOME

REPRESENTING WHOM? LUTHERAN SOCIAL SERVICE MONTANA

APPEARING ON WHICH PROPOSAL: SB 267

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

COMMENTS: THIS BILL NOT ONLY PROVIDES FOR A HOME STUDY ASSESSMENT  
~~PROCESSES THE BILL~~

OF THE ADOPTIVE FAMILY TO ASSURE THE BEST POSSIBLE PLACEMENT

FOR THE CHILD; IT, INHERENTLY, PROVIDES FOR THE ESTABLISHMENT

OF A PERMANENT FILE ON THE CHILD FOR FUTURE REFERENCE

& CONTACT. SUCH AS: ① WHEN THE CHILD REACHES AGE 18,

& THAT PERSON WANTS TO FIND OR LEARN ABOUT HIS/HER BIRTH PARENTS

THE FILE PROVIDES THE RESOURCE.

② IT ESTABLISHES <sup>EXTENSIVE</sup> ~~AN~~ MEDICAL RECORD & HISTORY ON THE CHILD

& BIRTH PARENTS & THEIR ANCESTORS THAT FOLLOWS THE CHILD,

WE FREQUENTLY RECEIVE REQUESTS <sup>FOR US</sup> TO REVIEW FILES FOR

NON-IDENTIFYING MEDICAL RESEARCH. IN SERIOUS SITUATIONS WE

COULD POSSIBLY CONTACT THE BIRTH PARENTS FOR CURRENT

DATA ON THEIR FAMILY THAT WAS NOT AVAILABLE AT THE TIME

OF PLACEMENT. ③ IT ESTABLISHES A SOCIAL, CULTURAL, & INTEREST HISTORY  
PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

NAME: John Wilson DATE: 2-13-81

ADDRESS: Dept. of Health & Env. Sciences

PHONE: 449-2614

REPRESENTING WHOM? Dept. of Health & Env. Sciences

APPEARING ON WHICH PROPOSAL: SB 245

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: Written testimony submitted.

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NAME: Richard L. Crankshaw DATE: 2/13

ADDRESS: 112 Fairway Dr., Hialeah

PHONE: 449-2645

REPRESENTING WHOM? Preventive Health Services Bureau, SPHES

APPEARING ON WHICH PROPOSAL: ~~HB~~ SB 245

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: Available to answer any questions that might arise regarding  
preventive services testing for syphilis or rubella.



DEPARTMENT OF REVENUE  
SENATE BILL NUMBER 272

Senate Bill 272 is a substantial revision of the laws relating to the issuance and execution of a warrant for distraint by the Department of Revenue. The warrant for distraint is an existing remedy used by the Department for the collection of unpaid taxes.

At the outset it should be noted that the warrant will not be used with respect to inheritance and estate taxes or to taxes collected at the local level, particularly property taxes.

The purpose of Senate Bill 272 is to provide a uniform method for the issuance and execution of a warrant that is applicable to all taxes (other than inheritance tax and estate tax) administered and collected by the department. The procedure has two basic elements: issuance and execution. Except in special circumstances, at least 60 days must pass from the due date of the tax until a warrant may be issued and prior to execution the opportunity for a hearing with respect to the underlying tax must be available to the taxpayer. Under this procedure, it is possible and will in fact most often be the case that the opportunity for a hearing will precede the issuance of the warrant.

The significance of issuance of the warrant lies in the fact that upon filing the warrant with a clerk of the district court, a lien arises on all real and personal property of the taxpayer in the county wherein the court is located. The resulting tax lien has the effect of a court judgement as far as enforcement is concerned.

At present the warrant mechanism is specifically provided for with respect to personal income tax, corporate license taxes, and child support debts. Additionally, the statutes provide for liens by the filing of various documents for such taxes as the oil and gas severance tax, special fuels tax, etc. These latter liens apply to real property, personal property, or both, depending on the particular tax involved. Several of these liens can be obtained within 15 days of notification of the taxpayer. Moreover there are no provisions relating to prehearing execution. The revision in Senate Bill 272 addresses these differences and attempts to provide a remedy that is fair to the taxpayer and effective for the Department.

Section Analysis

Section 1. New Section. This section defines the warrant for distraint and the amount of the warrant. The warrant when filed is a lien upon all real and personal property of the taxpayer in the county where the lien is filed.

Section 2. New Section. The procedure for issuance of a warrant is developed. The procedure involves two 30-day periods. Thirty days after the due date, the department may issue a notice to the taxpayer that unless payment is received within 30 days of the notice, a warrant may be issued. The 30-day periods may be avoided as provided in Section 3.

Section 3. New Section. This section provides for issuance of a warrant without waiting for either of the 30-day periods referred to in Section 2 to expire in two cases: the jeopardy situation and the trust situation. In the jeopardy situation immediate action may be required to protect the state's interest. In the trust situation, withholding, the taxpayer is holding the money in trust and is subject to greater regulation. Note that utilization of the provisions of Section 3 is discretionary.

Section 4. New Section. Section 4 outlines the procedure for filing a warrant.

Section 5. New Section. This section provides for an opportunity for a hearing prior to execution. The hearing is a contested case proceeding and an appeal from the hearing may be taken to STAB. The hearing must be requested in writing within 30 days of the notice of a right to a hearing. It is important to note that the opportunity for a hearing must occur prior to execution on a filed warrant. The hearing is on the underlying tax liability. The hearing requirement may be satisfied prior to issuance of the warrant, and in fact in most cases this will be the situation. However, should a warrant be issued without an opportunity for a hearing, Section 5 will insure that no action may be taken on the warrant until the opportunity is made available.

Section 6. New Section. The method for execution upon the warrant is outlined. The language is based on existing material in section 15-30-311, M.C.A.

Section 7. New Section. This section, the analog of Section 3 above, provides for pre-hearing execution in the jeopardy and trust situations. When the provisions of Section 7 are used, notice must be given to the taxpayer and a hearing, if requested, must be held as soon as possible.

Section 8. New Section. Section 8 details the provisions for full or partial release of the lien.

Section 9. New Section. It is made clear that the warrant for distraint is not exclusive, and the Department may use other remedies for the collection of unpaid taxes. Such a remedy would be a suit in district court. A civil action might be desirable when an out-of-state taxpayer is involved, and the Department will have to enforce the judgment in a foreign jurisdiction.

Section 10. Amends 15-30-208, M.C.A. This section is rewritten to tie the warrant procedure for withholding taxes to the general provisions in Sections 1 through 9.

Section 11. Amends 15-30-226, M.C.A. The language dealing with warrants is deleted as unnecessary in view of the new sections.

Section 12. Amends 15-30-311, M.C.A. This section, which is the general warrant section for individual income tax, is rewritten to mesh with the new sections.

Section 13. Amends 15-30-312, M.C.A. On page 10, lines 8 and 9, language is added to tie this section to the provisions of the new sections. Section 15-30-312, M.C.A., deals with jeopardy assessments.

Section 14. Amends 15-31-406, M.C.A. Section 15-31-527, M.C.A., is proposed for repeal by Senate Bill 272 (see Section 54), and consequently a reference to 15-31-527, M.C.A., on page 10, line 21, must be deleted.

Section 15. Amends 15-31-525, M.C.A. This section is extensively amended to tie it to the new sections.

Section 16. Amends 15-35-105, M.C.A. This section relates to the coal severance tax. The issuance of a warrant would be subject to the provisions of Sections 1 through 9.

Section 17. Amends 15-36-107, M.C.A. This section relates to the oil and gas severance tax. It is amended for consistency with the new provisions.

Section 18. Amends 15-36-108, M.C.A. This section also relates to the oil and gas severance tax, and it too is rewritten to tie it to the provisions of the new section.

Section 19. Amends 15-37-107, M.C.A. This section relates to the tax on metalliferous mines and is rewritten to tie the language to the provisions of the new sections.

Section 20. Amends 15-37-206, M.C.A. This section deals with micaceous mineral mines and is rewritten to tie it to the new sections.

Section 21. Amends 15-38-107, M.C.A. This section and the next relate to the resource indemnity trust tax. The section is amended for consistency with the new provisions.

Section 22. Amends 15-38-108, M.C.A. This section is rewritten to tie the language to that found in the new sections.

Section 23. Amends 15-51-111, M.C.A. This section is concerned with the electric energy producers' license tax. The section is rewritten for consistency with the new sections.

Section 24. Amends 15-51-112, M.C.A. Section 15-51-112, M.C.A., also relates to the electric energy producers' license tax. The section is amended to tie it to the new sections.

Section 25. Amends 15-53-112, M.C.A. Section 15-53-112, M.C.A., is concerned with the telephone company license tax. The section is changed for consistency with the new sections.

Section 26. Amends 15-53-113, M.C.A. The amendments to this section, which also deals with the telephone company license tax, tie the section to the new sections.

Section 27. Amends 15-54-112, M.C.A. This section, dealing with the express company license tax, is amended for consistency with the new sections.

Section 28. Amends 15-54-113, M.C.A. Section 15-54-113, M.C.A., relating to the express company license tax, is amended to tie the language to that used in the new sections.

Section 29. Amends 15-55-109, M.C.A. This section, concerning the freight line company license tax, is amended to tie it to the new provisions.

Section 30. Amends 15-56-112, M.C.A. This section and the next deal with the sleeping car company license tax. The section is changed for consistency with the new sections.

Section 31. Amends 15-56-113, M.C.A. Section 15-56-113, M.C.A., is rewritten to tie it to the provisions of the new sections.

Section 32. Amends 15-58-106, M.C.A. Relating to the coal retailer's license tax, this section is amended for consistency with the new sections.

Section 33. Amends 15-58-107, M.C.A. This section, also dealing with the coal retailer's license tax, is revised to tie it to the new sections.

Section 34. Amends 15-59-106, M.C.A. This section, which relates to the tax on cement and gypsum producers, is rewritten for consistency with the new material.

Section 35. Amends 15-59-107, M.C.A. Also relating to the tax on cement and gypsum producers, section 15-59-107, M.C.A., is reworded to relate to the provisions of the new sections.

Section 36. Amends 15-59-205, M.C.A. Section 15-59-205, M.C.A., is amended for consistency with the new material. This section, as well as the next, is concerned with the tax on cement dealers.

Section 37. Amends 15-59-206, M.C.A. This section is revised to tie it to the new sections.

Section 38. Amends 15-70-211, M.C.A. This section, dealing with the gasoline tax, is extensively rewritten to tie it to the provisions found in Sections 1 through 9 of Senate Bill 272.

Section 39. Amends 15-70-334, M.C.A. Dealing with the special fuels use tax, this section is also extensively reworded to tie it to the new material.

Section 40. Amends 16-1-409, M.C.A. This section, relating to the beer tax, is rewritten to tie the language to that found in the new sections.

Section 41. Amends 40-5-222, M.C.A. This section and sections 42 through 50 relate to child support. The child support laws already contain the warrant mechanism and the amendments tie the existing language to the new provisions. Various 20-day periods are changed to 30-day periods for consistency.

Section 42. Amends 40-5-223, M.C.A. Please see the comments to section 41.

Section 43. Amends 40-5-224, M.C.A. Please see the comments to section 41.

Section 44. Amends 40-5-225, M.C.A. Please see the comments to section 41.

Section 45. Amends 40-5-226, M.C.A. Please see the comments to section 41.

Section 46. Amends 40-5-241, M.C.A. This section is extensively rewritten to coordinate with the new material.

Section 47. Amends 40-5-245, M.C.A. Please see the comments to section 41.

Section 48. Amends 40-5-246, M.C.A. Please see the comments on section 41.

Section 49. Amends 40-5-255, M.C.A. Please see the comments to section 41.

Section 50. Amends 40-5-226, M.C.A. Please see the comments to section 41.

Section 51. Amends 69-1-226, M.C.A. This section relates to the consumer counsel tax and is rewritten for consistency with the new material.

Section 52. Amends 69-1-227, M.C.A. This section, relating also to the consumer counsel tax, is amended to tie the language to that employed in the new material.

Section 53. Codification instruction.

Section 54. Repealers. This section repeals sections 15-30-315, M.C.A., and 15-31-527, M.C.A. The sections are rendered redundant by the new provisions. The text of the repealed material is as follows:

**15-30-315. Release of lien or partial discharge of property.** (1) The department shall issue a certificate of release of any lien imposed with respect to any tax due under this chapter when it finds that the liability for the amount of tax assessed, together with all penalties and interest in respect thereof, has been fully satisfied. The department may issue a certificate of release if it determines that the lien is unenforceable.

(2) The department may issue a certificate of discharge of any part of the property subject to any lien imposed with respect to any tax due under this chapter if:

(a) it finds that the fair market value of that part of the property remaining subject to the lien is at least double the value of the unsatisfied liability secured by such lien and the amount of all other liens upon the property which have priority to such lien;

(b) there is paid to the state treasurer in part satisfaction of the liability secured by the lien an amount which shall not be less than the value, as determined by the department, of the interest of the state of Montana in the part to be discharged; or

(c) the department determines at any time that the interest of the state of Montana in the part to be so discharged has no value.

History: En. Sec. 1, Ch. 130, L. 1965; amd. Sec. 193, Ch. 516, L. 1973; R.C.M. 1947, 84-4958.

**15-31-527. Release of tax liens.** (1) The department of revenue shall issue a certificate of release of any lien imposed with respect to any tax due under this chapter when it finds that the liability for the amount of tax assessed, together with all penalties and interest in respect thereof, has been fully satisfied. The department may issue a certificate of release if it determines that the lien is unenforceable.

(2) The department may issue a certificate of discharge of any part of the property subject to any lien imposed with respect to any tax due under this chapter if:

(a) it finds that the fair market value of that part of the property remaining subject to the lien is at least double the value of the unsatisfied liability secured by such lien and the amount of all other liens upon the property which may have priority to such lien;

(b) there is paid to the state treasurer in part satisfaction of the liability secured by the lien an amount which shall not be less than the value, as determined by the department, of the interest of the state in the part to be discharged; or

(c) the department determines at any time that the interest of the state in the part to be so discharged has no value.

History: En. Sec. 1, Ch. 53, L. 1967; amd. Sec. 57, Ch. 516, L. 1973; R.C.M. 1947, 84-1505.1.



Mr. Chairman and Members of the Committee;

My name is John C. Wilson. I am Chief of the Bureau of Records and Statistics, and am appearing on behalf of the Department of Health and Environmental Sciences regarding sections 3 through 12 of this bill.

Section 3 concerns the release of data from the Department's files for persons who have been adopted. The last session of the legislature amended 50-15-206 M.C.A. to require a court order for an adopted person born out-of-wedlock before he or she could get information from the sealed file (that is the file created pursuant to adoption, which contains the original birth certificate, the certificate of adoption form, and related documents). Section 50-15-304 provides in (2) (c):

"The Department shall seal original birth records and open them only on demand of the adoptive person if of legal age or on order of a court."

Section 50-15-206 was amended to read:

"Disclosure of illegitimacy of birth or information from which illegitimacy can be ascertained may be made only: (a) upon an order of a court to determine personal or property rights. An adoptive person of legal age may apply to the court for such an order."

Since there seemed to us to be a contradiction between the two sections as to whether or not the court order was required before a sealed file could be opened, we contacted our legal division which subsequently contacted the Montana Attorney General for an opinion in this matter. The essence of

his reply, dated January 8, 1980 is:

"You have requested my opinion on the following question:

Is a court order required before an adopted person may be allowed access to his or her sealed original birth records?"

His opinion stated:

"Legitimately born adopted persons of legal age may have their sealed original birth records opened on demand pursuant to section 50-15-304 (2) (c), M.C.A. Illegitimately born adopted persons may apply to the court for disclosure of their sealed original birth records pursuant to section 50-15-206 (1) (a), M.C.A.

Since it is not possible to ascertain when a person presents himself in our office with a request to open his sealed file whether he was born in - or out-of-wedlock, members of our staff have to excuse themselves, open the sealed file, and determine whether or not the person is legitimate. If the person was born in-wedlock, we may open the sealed file and provide him with certified copies of the documents contained therein. If the person was born out-of-wedlock, we have to advise him that, due to the circumstances surrounding his birth, we are not able to provide a certified copy unless we have a court order. This situation is awkward, both for our staff and for the registrants. We believe that out of fairness, all persons ought to be treated the same, whether they were born in-or out-of-wedlock. Senator Mazurek suggests that all persons desiring to have their sealed files opened be required to have a court order.

Section 4 simply adds two new definitions to the definitions sections

of the Montana Vital Statistics Law. The new definitions are "dissolution of marriage", formerly called a divorce, and "invalid marriage", formerly called an annulment.

Section 5 replaces the word divorce with "dissolution of marriage" or "invalid marriage", to be consistent with other Montana statutes.

Section 6 has to do with the fees charged for certified copies of birth and death certificates. It brings Montana fees for certified copies more into line with those charged by other states. Inflation has affected fees for certified copies nation-wide, and the proposed fee would double the amount deposited to the state general fund, provided the number of certified copies remains the same. In addition, one dollar of the fee is to be deposited in an earmarked revenue fund to be used by the Department for the maintenance of indexes to, and costs for the preservation of vital records.

Sections 7 and 8 simply change the date ~~of~~<sup>for</sup> marriages, divorces, annulments, and annulment of adoption to be due in our office on the 10th of the month instead of the 16th. Our processing is monthly and the cutoff date for the receipt of births, deaths, and fetal deaths is the 10th of the month. Over the years, Clerks of District Courts have co-operated with us in having their reports by the 10th also. We don't know why the 16th was listed as the cutoff date in the first place, the 10th of the month makes the production of vital statistics more timely, so that all kinds of records can be processed on the same schedule.

Section 9 is related to section 3 regarding the opening of sealed files on persons who have been adopted. The change here is to remove permission to open a sealed file on demand of the adopted person if of legal age. We are also asking at this point that the paragraph be clarified so that it would be clear that our Bureau is authorized to provide the applicant with

certified copies of the documents contained in the sealed files upon his or her request.

Section 10 simply provides that failure to report legally induced abortions to our Bureau is a misdemeanor.

UNIFORM LAW COMMISSIONERS'  
MODEL PERIODIC PAYMENT OF JUDGMENTS ACT

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT  
IN ALL THE STATES

at its

ANNUAL CONFERENCE  
MEETING IN ITS EIGHTY-NINTH YEAR  
ON KAUAI, HAWAII  
JULY 26 - AUGUST 1, 1980

With Prefatory Note and Comments

# STANDING COMMITTEE REPORT

February 13, 1931

MR. **PRESIDENT**

We, your committee on **JUDICIARY**

having had under consideration **SENATE** Bill No. **209**

Respectfully report as follows: That **SENATE** Bill No. **209**

~~DO PASS~~  
DO NOT PASS

JRF

DATE February 13, 1981

## COMMITTEE ON JUDICIARY

SB 272 SB 209  
 SB 267 SB 369  
 SB 245

## VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Susan Sued	Mt Home Ec. Assoc.			
John Anderson MD	Mt. Dept. Health	SB 245	2	
John Wilson	" " "	SB 245	✓	
John Alke	MOU & Mount Bankers	272		✓
James R. Hughes	MOUNTAIN BELL	272		✓
Douglas Olson	Mt. Dept Health	245	✓	
Norma Vestre	SRS	267	X	
Betty Barr	SRS	267	X	
John Frankino	Cath. Soc. Serv	267	Amend	
Mike Abley	Supreme Court			
Burt Annin	SRS	267	Amend	
Harry Womack	D. OR.	272	✓	
Steve Shelmser	Press			
Langston Thomas	Brighter Life			
DON Molloy	PRIVATE ATTORNEY	209		✓
CREG MUNKS	PRIVATE ATTORNEY	209		✓
WILLIAMS	LV of Mt			

(Please leave prepared statement with Secretary)

(6)