

MINUTES OF MEETING  
SENATE JUDICIARY COMMITTEE  
March 5, 1981

The thirty-sixth 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 HOUSE BILL 379:

INCREASING THE MAXIMUM SENTENCE FOR  
CRIMINAL VIOLATIONS OF THE MONTANA  
SECURITIES ACT.

Rep. Hemstad, District 40, Great Falls, presented the bill.

Bruce Larson, representing the State Auditor's office, presented an amendment (attached Exhibit A) and said that the sentences handed out for swindling someone out of his securities should be more closely in keeping with the sentences handed out for stealing the same amount of money in a burglary or robbery, and that there should be an extended statute of limitations.

Senator Anderson questioned how this extended statute of limitations would compare with federal law, and whether there is a real need for this extension.

Mr. Larson cited the case of some Montana investors who were sold interest in a coal mining venture. After the five-year statute of limitations expired, the State Auditor learned that the geological reports were fraudulent and he would like to be able to pursue criminal action in the case. In response to a question by Senator Crippen, Mr. Larson stated that they were asking for an open-ended statute of limitations, and that this sort of statute exists in other sections of law.

CONSIDERATION OF HOUSE BILL 485:

IMPOSING LIABILITY ON SURETIES FOR  
INTEREST ON THE PENALTY AND AN  
ADDITIONAL PENALTY FOR VEXATIOUS OR  
BAD FAITH REFUSAL TO PAY OR PERFORM  
ON AN ASSURED OBLIGATION.

Rep. Hemstad presented the bill.

Tom Harrison, representing the Montana Judges Association, told of representing a client who turned a gas station into an office with the help of many contractors and subcontractors. A lien was placed on his client's business because of lack of payment to one of the subcontractors by the general contractor. After a long period of public exposure and mental duress, the surety finally paid; but Mr. Harrison felt that had this bill been the law his client would have been spared his ordeal.

Speaking in opposition to the bill Paul Keller, representing the American Insurance Association, presented a copy of the existing law (attached Exhibit B) and said that it adequately covers bonding companies. He felt that the provisions of this bill would prevent a bonding company from telling what they were signing up for when they issued the bond.

Bob Durand, representing USF&G, opposed the bill by saying that open bonds are difficult to underwrite and would cause problems in several areas. He also felt that the present laws are adequate.

Joe Williams, of USF&G's claims department, opposed the bill by saying that it would be wrong to punish the industry for the misdeeds of individual companies.

In closing, Rep. Hemstad stated that this bill does not represent an attempt to punish the industry -- only those companies who are at fault.

Senator Crippen asked Mr. Williams to define an insurance policy as opposed to a surety bond. Mr. Williams responded by saying that an insurance policy involves two parties, with the insurer agreeing to pay for certain damages; and a surety involves three parties, with the surety agreeing to fulfill the contract if the principal does not. Mr. Durand added that the intention of a surety is not to ever pay for a loss, so that the fee is merely a service charge -- not an attempt to build up a fund for eventual payment of loss.

CONSIDERATION OF HOUSE BILL 508:

TO REVISE CERTAIN PENALTIES RELATING  
TO SIZE, WEIGHT, AND LOAD STANDARDS  
FOR MOTOR VEHICLES.

Rep. Yardley, District 74, presented the bill and said that the intent is not to imprison someone for overweight violations.

Speaking in support of the bill, Beate Galda, attorney for the Department of Highways, stated that there has never been a prison sentence imposed for a weight violation.

CONSIDERATION OF HOUSE BILL 598:

TO PROVIDE FOR THE SETTING OF A DATE  
FOR EXECUTION OF A CRIMINAL DEFENDANT.

Rep. Asay presented the bill and quoted a 1976 supreme court opinion as saying that the death penalty provision in three states is constitutionally valid (attached Exhibit C).

John Maynard, Assistant Attorney General, spoke in support of the bill.

Senator Crippen said that he wished to amend the bill to lengthen the two-day minimum between sentence and new execution date. Mr. Maynard pointed out that there is an appeal required by law anytime anyone is sentenced to death, and that the death sentence cannot be carried out while any appeal is pending; and he felt that these and other safeguards eliminate the need for a longer minimum time period.

CONSIDERATION OF HOUSE BILL 656:

TO CLARIFY THAT A SUPREME COURT  
JUSTICE OR DISTRICT COURT JUDGE WHO  
FILES A FALSE AFFIDAVIT IS GUILTY OF  
FALSE SWEARING AND SUBJECT TO  
CENSURE, SUSPENSION, OR REMOVAL.

Rep. Hannah, District 67, Billings, presented the bill and said that if the law remains requiring judges to keep current on their work, those judges should be held accountable just like anyone else would be.

Tom Harrison, representing the Judges Association, opposed the bill, saying that if a specific law is enacted relative to a judge's false affidavit, then other false affidavits, because they are not included in that law, would perhaps not be considered in violation of the law on false swearing.

In closing Rep. Hannah stated that respect for law and order is needed in this state, and that allowing judges to break the law detracts from the credibility of our judicial system. He suggested possibly amending the bill to allow exemptions which would permit relief for the harder-working judge who might need more time granted.

Senator Brown stated that the Judicial Standards Commission presently has authority to handle judges who are not doing their job well, and that this bill is too rigid.

Senator Mazurek added that enforcement of available remedies is the real problem.

DISPOSITION OF HOUSE BILL 379:

Senator S. Brown moved that this bill BE CONCURRED IN, and his motion passed unanimously.

DISPOSITION OF HOUSE BILL 485:

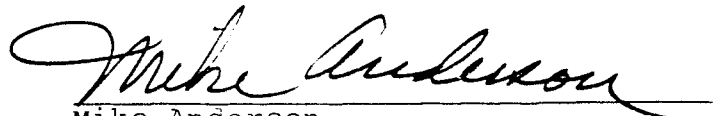
Senator Crippen moved that this bill BE NOT CONCURRED IN, and his motion passed over Senator S. Brown's objection.

DISPOSITION OF HOUSE BILL 508:

Senator S. Brown moved that the bill BE CONCURRED IN, and his motion passed with Senator Crippen in opposition.

DISPOSITION OF HOUSE BILL 598:

Senator Mazurek moved that the bill be amended on page 1, line 20, by striking "2" and inserting "5". His motion passed unanimously. Senator S. Brown moved that the bill be CONCURRED IN AS AMENDED, and this motion passed unanimously.

A handwritten signature in cursive script, reading "Mike Anderson", written in dark ink. The signature is fluid and stylized, with a long horizontal flourish extending to the right.

Mike Anderson  
Chairman, Judiciary Committee

ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date *March 5, 1981*

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.

NAME: Eric L. ... DATE: ...

ADDRESS: ...

PHONE: 414-2045

REPRESENTING WHOM? ...

APPEARING ON WHICH PROPOSAL: 40

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: ...

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Paul Tello DATE: 3/5/61

ADDRESS: Selig, Mont

PHONE: 442-0230

REPRESENTING WHOM? American Overseas Alliance

APPEARING ON WHICH PROPOSAL: H. B. 425

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

COMMENTS: This bill is very positive  
and would make it impossible  
to get binding in the State  
of Minnesota.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME :

DATE :

ADDRESS :

PHONE :

REPRESENTING WHOM?

APPEARING ON WHICH PROPOSAL:

DO YOU:

SUPPORT?

AMEND?

OPPOSE?

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.



NAME: John F. Lee DATE: 7/5/61

ADDRESS: 111

PHONE: 7-10-29

REPRESENTING WHOM? John F. Lee

APPEARING ON WHICH PROPOSAL: H.B. 511

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

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

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PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

House Bill No. 5078 was introduced at the request of the Department of Highways. The purpose of this bill is to delete the imprisonment penalty for violations of certain GVW weight and dimension standards and to make certain other violations of GVW statutes misdemeanors.

The amendment of subsection 1 of the statute removes the imprisonment penalty. The reason for the amendment is to assure that jurisdiction over violations of this statute remains in the justice of the peace courts. As it is presently written, the combination of a possible imprisonment penalty and a possible fine of \$1,000 takes jurisdiction out of the justice court and means that a violation would have to be prosecuted in district court.

Justice court jurisdiction is limited to misdemeanors in which a maximum fine not exceeding \$500 and imprisonment not exceeding six months may be imposed. However, where the misdemeanor is punishable by a fine only not exceeding \$1,500, justice courts have concurr~~ent~~ jurisdiction with district courts. (Section 3-10-303, MCA) Therefore, if the offense is punishable only by a maximum fine of \$1,000, the violation may be prosecuted in justice court.

It is unlikely that any court would impose a penalty of imprisonment for an overweight truck violation. Because GVW violations are usually prosecuted in justice courts, it is desirable that they have jurisdiction over all of the overweight violations. *Report on building district courts.*

The addition of the third subsection is intended to correct a change resulting from the recodification procedure. The three

sections referred to were enacted or based on statutes enacted in 1931. Violations of these sections were punishable under Section 32-1130, R.C.M. 1947. In the 1974 recodification of highway laws the word "act" was changed to "32-1128". The word "act" originally applied to all of the sections of the act.

GVW personnel have continued to enforce these sections. In a study of fines and forfeitures made last spring, the Department first realized that there were no longer any enforcement provisions for these statutes. The recodification appears to be in error because the Legislative Council felt that the section referred only to Section 32-1128. There was no legislative intent to change existing law.

Thus the addition of subsection 3 is intended to restore the power to enforce these sections by making their violation a misdemeanor. The violations referred to are violations of haystack mover standards (61-10-123), failure to obey the highway patrol or GVW enforcement personnel when they require weighing on portable scales or unloading of excess weight (61-10-141), and failure to carry special permits and display them to officers for inspection purposes (61-10-142).

NAME: John H. Maynard DATE: 3/5/80

ADDRESS: Attorney General's Office

PHONE: 449-2026

REPRESENTING WHOM? Attorney General

APPEARING ON WHICH PROPOSAL: 178-28

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

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

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Exhibit A

Proposed Amendment to House Bill 379

Page 1, line 6 and line 7

Following: "OF THE" on line 6

Strike: "MONTANA SECURITIES ACT"

Insert: "SECURITIES ACT OF MONTANA"

**Part 3 — Insurers—Noninsurance-Related Prohibitions**

- 18-301. Prohibited relations with mortuaries.
- 18-302. Defaming insurer prohibited.
- 18-303. Boycott, coercion, or intimidation prohibited.
- 18-304. Interlocking ownership and management — restrictions.
- 18-305. Political contributions prohibited — penalty.

**Part 4 — Insured's Relations With Insurer**

- 18-401. False applications, claims, and proofs of loss — penalty.

**Part 5 — Miscellaneous Prohibitions**

- 18-501. Lenders — restrictions on solicitation, rejection, charges, and disclosure — favoring agent prohibited.

**Parts 6 through 9 reserved**

**Part 10 — Enforcement**

- 18-1001. Complaint handling — record.
- 18-1002. Power of commissioner to examine insurers.
- 18-1003. Undefined unfair practices — procedures for determining and restraining.
- 18-1004. Desist orders for prohibited practices.
- 18-1005. Penalty for violation of cease and desist orders.

**Part 1**

**General Provisions**

**33-18-101. Purposes.** The purpose of this chapter is to regulate trade practices in the business of insurance in accordance with the intent of Congress as expressed in P.L. 79-15, which was approved March 9, 1945, by refining or providing for determination of all such practices in this state which constitute unfair methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined.  
History: En. Sec. 203, Ch. 286, L. 1959; amd. Sec. 6, Ch. 320, L. 1977; R.C.M. 1947, 40-3501.

**33-18-102. Unfair methods or deceptive practices prohibited.** No person shall engage in this state in any trade practice which is defined in this chapter as or determined pursuant to this chapter to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.  
History: En. Sec. 204, Ch. 286, L. 1959; R.C.M. 1947, 40-3502.

**Part 2**

**Insurer's Relations With Insured**

**33-18-201. Unfair claim settlement practices prohibited.** No person may, with such frequency as to indicate a general business practice, engage in the following:

- (1) misrepresent pertinent facts or insurance policy provisions relating to coverages at issue;
- (2) fail to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;
- (3) fail to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;
- (4) refuse to pay claims without conducting a reasonable investigation based upon all available information;
- (5) fail to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;
- (6) neglect to attempt in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear;
- (7) compel insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds;
- (8) attempt to settle a claim for less than the amount to which a reasonable man would have believed he was entitled by reference to written or printed advertising material accompanying or made part of an application;
- (9) attempt to settle claims on the basis of an application which was altered without notice to or knowledge or consent of the insured;
- (10) make claims payments to insureds or beneficiaries not accompanied by statements setting forth the coverage under which the payments are being made;
- (11) make known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;
- (12) delay the investigation or payment of claims by requiring an insured, claimant, or physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information;
- (13) fail to promptly settle claims, if liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage; or
- (14) fail to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

History: En. 40-3502.1 by Sec. 1, Ch. 320, L. 1977; R.C.M. 1947, 40-3502.1.

**33-18-202. Misrepresentation and false advertising of policies prohibited.** No person shall make, issue, circulate, or cause to be made, issued, or circulated any estimate, illustration, circular, sales presentation, omission, comparison, or statement which:

- (1) misrepresents the benefits, advantages, conditions, or terms of any insurance policy;
- (2) misrepresents the dividends or share of the surplus to be received on any insurance policy;
- (3) makes any false or misleading statement as to the dividends or share of surplus previously paid on any insurance policy;

*Exhibit C*

STATE  
OF  
MONTANA

**ATTORNEY GENERAL  
MIKE GREELY**

STATE CAPITOL, HELENA, MONTANA 59601 TELEPHONE (406) 449-2026

MEMORANDUM

13 February 1981

To: THE HONORABLE TOM ASAY  
House of Representatives

THE HONORABLE MICHAEL KEEDY  
House of Representatives

From: JOHN H. MAYNARD  
Assistant Attorney General

Re: HB 598

This bill clarifies the procedure for setting an execution date when a previously granted stay of execution has been dissolved.

As you may know, it was in 1976 that the United States Supreme Court issued a series of opinions indicating that the death penalty schemes of three states, Georgia, Florida, and Texas, appeared to meet the requirements of the United States Constitution. Since that time, persons throughout the United States who have been sentenced to death, including three in the State of Montana, have been pursuing every possible legal remedy available to them under the law to have those sentences overturned.

In most states, and this includes Montana, this means that a person who has been sentenced to death receives an automatic appeal to the state supreme court. In Montana, this automatic appeal is provided for in section 46-18-307, MCA, and it is one of the requirements found by the United States Supreme Court to be essential to a constitutionally valid death penalty scheme. While pursuing this appeal, section 46-20-204, MCA, provides that the district court must stay the sentence of death it imposed until final order by the supreme court.

(212)

If the state supreme court upholds the conviction and the death sentence, the convicted person next petitions the United States Supreme Court asking that court to review his case. The Supreme Court has no obligation to consider the case and often times refuses.

At that point the person who has been sentenced to death usually returns to the state district court and raises some new issues. In Montana he does this under our Post-conviction Procedure Act found in Chapter 21 of Title 46 of the MCA. The three persons sentenced to death in Montana have been permitted to do this though the Attorney General's office has argued that allowing this procedure in capital cases in effect gives the person a second appeal, something he is not constitutionally entitled to. The Montana Supreme Court will soon decide this question and the answer could affect future cases dramatically. Presently though, once the petition for postconviction relief is considered and rejected by the district court the convicted person appeals to the state supreme court and again to the United States Supreme Court.

At that point he is considered to have exhausted his state remedies, that is, those remedies available to him by virtue of state statutes. He then has, because of federal statutes, an opportunity to present a petition for a writ of habeas corpus in federal district court. If he fails there he appeals to the Federal Court of Appeals for the Ninth Circuit and, finally, again to the United States Supreme Court if the Ninth Circuit rejects his arguments. Presumably, if his conviction is upheld at each point along this road, the sentence is then carried out. This is what happened in the case of John Spinkellink in Florida in 1979.

At each stage after the initial appeal, it is necessary to set an execution date for the convicted person even though it is reasonably certain that some court will stay that execution date. The reason for this is that otherwise the convicted person has no incentive to file his petition or appeal an order. He could, conceivably, delay filing a petition for months, or even years.

Under the current law, as it now reads, this series of appeals and stays of execution is not really contemplated. After the three Montana cases currently involved in this process are finally resolved, the process may be shortened considerably. But, in the meantime, there is a need to clarify the guidelines within which the district court must act in setting execution dates following the dissolution of stays. HB 598 does that.

(1)



Memorandum  
Page No. 3  
13 February 1981

This bill provides that the district court shall set a new execution date after a court denies relief. It thereby insures that a defendant will pursue his remedies expeditiously. The bill gives the district court some discretion in setting the date so that the filing deadlines it sets will be met by the defendant. In the final analysis, this bill fills a hole in the current law, which, if not filled by the legislature, will have to be settled by the court's, creating the possibility of even more delay in an already lengthy process.

(36)

DATE: March 5, 1981

COMMITTEE ON

HE 379 HE 598  
HE 485 HE 656  
HE 508

## VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Don't Kill for Treason Wm. J. Donaghy	American Constitution USF46 " " "	74 13. 475 " "		X " X V
Bruce Larson	State Auditor	HB 379	X	
Don't Kill	Don't Kill	HB 379	X	
Idun Wengard	House Bill Office	HB 378	X	
Tom Harris	Mont. Judge Assn	HB 656		X

(Please leave prepared statement blank)

# STANDING COMMITTEE REPORT

March 5, 1981

MR. PRESIDENT:

We, your committee on jud JUDICIARY

having had under consideration HOUSE Bill No. 598

ASAY (ANDERSON)

Respectfully report as follows: That HOUSE Bill No. 598,  
third reading, be amended as follows:

1. Page 1, line 20.  
Following: "than"  
Strike: "2"  
Insert: "5"

JRE

And, as so amended,  
EXCERPT:  
BE CONCURRED IN

# STANDING COMMITTEE REPORT

March 5, 1931

MR. PRESIDENT:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 508

YARDLEY (ANDERSON)

Respectfully report as follows: That HOUSE Bill No. 508

~~DO PASS~~

BE CONCURRED IN

# STANDING COMMITTEE REPORT

March 5, 1981

MR. PRESIDENT:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 485

Respectfully report as follows: That HOUSE Bill No. 485

*4/c.*

~~DO PASS~~

BE NOT CONCURRED IN

# STANDING COMMITTEE REPORT

March 5, 19 81

MR. PRESIDENT:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 379  
HEMSTAD (ANDERSON)

Respectfully report as follows: That HOUSE Bill No. 379

*W.C.*  
~~DO PASS~~  
BE CONCURRED IN