

MINUTES OF THE MEETING  
BUSINESS AND INDUSTRY COMMITTEE  
MONTANA STATE SENATE

March 13, 1981

The meeting was called to order by Chairman Hazelbaker at 10 a.m. in room 404 of the Capitol Building on Friday, March 13, All members were present.

HOUSE BILL NO. 285: In the absence of Representative Fabrega, Senator Goodover, co-sponsor, explained the bill. The bill broadens the Uniform Common Trust Act to allow any qualified bank or trust company to administer common trust funds for any affiliated bank or trust company. "Affiliated" is defined to conform to section 1504 of the Internal Revenue Code. Each common trust fund is still a separate and distinct entity, and each participating fiduciary has a proportionate undivided interest in the fund and its income. Ownership of the property of the common trust fund is in the trustee. When we get through with the proponents Representative Fabrega will be here.

PROPONENTS:

LARRY LEE MASTER representing Montana Bank, Great Falls. Fiduciaries are now allowed to establish common trust funds. As you are all aware, because of the expense a small trust department can not really justify establishing their own trust fund. We can certainly do a better job.

GENE PHILLIPS representing the Kalispell Conrad National Bank. We do feel it would be of benefit to people in the Kalispell area. Nothing exempts a common trust fund or any fiduciary thereof from the requirements of title 33 if such common trust fund or fiduciary is used for insurance purposes. We support the bill.

NO OPPONENTS:

QUESTIONS FROM THE COMMITTEE:

SENATOR BOYLAN: Will this take capital out of the State of Montana that could be used for investments in Montana.

MR. PHILLIPS: You would be making the same type of investments, however, it might be they are saving money.

With some general discussion the hearing closed on House Bill 285.

HOUSE BILL NO. 321: In the absence of Representative Fabrega, Senator Goodover read through the bill. The bill revises the Montana Consumer Loan Act to adjust dollar amounts in accordance with

fluctuations of the consumer price index. The bill provides that designated dollar amounts may be changed on July 1 of even-numbered years if the consumer price index has changed by 10% or more during that time period. The dollar amounts would be adjusted in multiples of 10% but could not be reduced below the amounts appearing in this act on its effective date. The Department of Business Regulation would publish the changed amounts by rule.

JEROME LOENDORF representing the Montana Consumer Finance Association. There are a couple of differences between them and other financial institutions. He discussed the disclosures required by the Federal Consumer Credit Protection Act, and the truth in lending. There are a number of changes in the bill, beginning on line 11, page 5.

1. The loan ceiling - they may not make loans above that amount. From time to time the dollar amounts will change as provided in the Consumer Price Index. This bill would allow the loan ceiling to be adjusted every two years. Idaho makes this adjustment every year.

2. On page 5 - charges of rates not in excess of \$20 per year per \$100 on that part of the principal amount of the loan not exceeding \$500. \$16 per year per \$100 on that part of the principal amount of the loan exceeding \$500 but not exceeding \$1000.

He discussed the rate break points. The reason for the changes is because during the last two years most have increased substantially. He gave examples of how costs are going up. There are some companies in the state that discourage small loans.

3. This ties these rate break points to the consumer price index. We are all aware that costs are going to increase. This simply allows the rate to adjust. They have to get their money from the marketplace. They are not allowed to take deposits. It used to be you could predict these things. He quoted the changes in the prime-rate.

4. On page 8, the provisions allow consumer finance companies to make loan contracts to the borrower. This would allow the finance company to pay them on his behalf and charge it to the loan, things such as title insurance fees and deeds.

5. On page 9, lines 5 and 6 it is concerned with the penalty if an overcharge is made on a loan. That is, a bona fide error of computation.

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6. On page 12, the change here is very simple. It would allow the consumer finance company to make the disclosures as required by state law.

7. In the very last section in the bill on page 18, lines 1 through 9, this simply allows that in the event of a dispute the attorneys fees will be awarded to the party in whose favor final judgment is rendered.

LES ALKE representing the Department of Business Regulation. Since 1959 it has been one of my duties to supervise consumer finance companies. I am here to answer questions.

NO OPPONENTS:

QUESTIONS FROM THE COMMITTEE:

SENATOR REGAN: I have a series of questions. What is the Idaho rate now.

JERRY LOENDORF: Somewhere under \$40,000. It is exactly the same as the consumer price index, and tied to it. On page 4, given the current rate to the 2% per month.

What is the APR?

MR. LOENDORF: \$300 - for one year it would be 35.06%

What would it be in subsection (b)?

MR. LOENDORF: You would have to calculate in each case.

SENATOR REGAN: Is 36% the most you can charge?

MR. LOENDORF: This is true, up to \$300.

Can you furnish me with the other rates, asked Mrs. Regan and Mr. Loendorf said that he would.

MR. ALKE: In discussing the APR, if you double the add-on rate and take 20% off you can see what we mean.

SENATOR REGAN: Why would you not modernize this bill so it would reflect what the interest rates are.

MR. LOENDORF: They could be. That is the way the law has always been. We only charged the break points in the rate of interest.

There was general discussion about the massive revision of the bill.

SENATOR REGAN: If you are going to do the job you should have done it in a reasonable manner.

Following this comment, there was loud discussion about the add-on rate and the discount rate.

SENATOR GOODOVER asked if there had been many abuses.

MR. ALKE: We have one man that specializes in supervising these agencies. We have found them to be very careful. It is the easiest industry to supervise that we have.

Then followed discussion about the refunds.

CHAIRMAN HAZELBAKER asked Mr. Alke to furnish the committee with a copy of rule 78 and he said that he would do so.

With no further discussion or questions the hearing closed on House Bill No. 321.

HOUSE BILL NO. 495: The bill was explained by Representative Toni Bergene, District 36, Great Falls. HB 495 removes the operation of the federal bankruptcy exemptions in Montana. The property allowed to be exempted in Montana would be the property exempt from execution of judgment. These are the exemptions that were allowed in Montana prior to the passage of the current law. This bill asks that the state bankruptcy be used rather than the federal. Because of the increase in bankruptcies sixteen other states have opted to not use the federal bankruptcy any longer. Most people don't file for a bankruptcy unless they have had a catastrophic situation.

JOHN ALKE representing the Montana Bankers Association spoke in support of the bill. I do a lot of work in this area. As has been mentioned there are a number of problems with bankruptcies right now. The enactment of the 78 code caused most of the problems. There is only one aspect of this that the state can deal with and that is House Bill 495. This bill would simply require a person to work within the state statutes. I want to go through a list with you and compare the federal and state exemptions.

	<u>STATE</u>	<u>FEDERAL</u>
1. Homestead (expanded entitlement)	\$20,000	\$7,500
2. Car <sup>1</sup>	\$ 1,000	\$1,200
3. Necessary furniture	no limit	\$ 200 per item

	<u>STATE</u>	<u>FEDERAL</u>
4. Life insurance	<sup>3</sup> No limit	Unmatured No limit Cash value \$4,000
5. 45 days earnings <sup>1</sup>	No limit	See 12 below
6. Clothes	No limit	See 3 above
7. 1 horse, 2 cows 4 hogs, 50 fowl, 3 months feed	See 3 above	See 3 above
8. Clock & family pictures		See 3 above
9. One gun	No limit	-----
10. Tools of trade	No limit	\$ 750
11. Jewelry		\$ 500
12. Omnibus		\$400 to \$7,900 <sup>4</sup>
13. Professionally prescribed health aids		No limit
14. Social Security, Welfare, Disability benefits, pension plans, Alimony		No limit <sup>5</sup>
15. Crime victim reparations, Wrongful Death Awards, Life Insurance proceeds, Personal injury awards		Reasonably necessary for support

FOOTNOTES:

1. One-half of these exemptions not exempt for debts incurred for necessities of life.

2. This exemption applies to household furnishings, goods, clothes, appliances, books, animals, crops, or musical instruments primarily for personal use.

3. This exemption applicable only if annual premiums less than \$500 per year.

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4. The unused portion of the federal homestead exemption may be added to the base of \$400.00.

5. Alimony and pension plans are restricted. Both are limited to the amount reasonably necessary for support, and the type of pension plan qualifying is strictly limited by the statute.

All pension questions should be referred to 11 USC 522(d)(10)(E) for answers.

Almost every form of state or federal benefit program has some sort of anti-diversion provision. These provisions are intended to prohibit creditors from being the beneficiaries of governmental benefit programs, instead of the intended beneficiary. These provisions generally prohibit attachment or execution on the benefits.

It should be noted that a substantial body of case law has arisen around the concept that such anti-diversion statutes apply not only to the benefit checks, but also money or property traceable to such benefits. To a degree, the bankruptcy code probably incorporates this tracing concept. Additionally, the bankruptcy code specifically applies the tracing concept to crime reparation awards, personal injury awards, and wrongful death awards. Most governmental benefit programs probably have an anti-diversion provision, but this should be checked to make sure.

He went on to explain the Omnibus position. He mentioned the bill Representative Kemmis has introduced that deals with bankruptcy also.

JEFF KIRKLAND: I am the Director for the Governmental and Community Relations for the Montana Credit Unions League. The League is a trade association representing 133 of Montana's 136 credit unions, and we stand in support of House Bill 495. We see this bill as priority. He explained the joint filing and how a debtor could come out in a bankruptcy situation with increased assets by using the federal and state, one for each spouse.

GEORGE FLEMING: We are extremely concerned with the bankruptcy laws in the State of Montana. There are two districts, east and west. We tried to develop some figures but we found out the courts don't give figures except by number. He discussed the amount of losses and how the bill is needed very seriously.

CURTIS HANSEN, the Executive Vice-President of the Montana Retail Association stated his support of the bill. The ability to jump back and forth from state to federal should be eliminated. He gave examples of switching of schedules to benefit the person seeking bankruptcy.

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In answer to a question, Mr. Fleming said he was representing the Credit Association of Cascade County. We hope to point out the losses figures and percentages caused in the eastern district of the Bankruptcy Court. The losses in the eastern district to September 15, 1980 were \$19,000,000 and by the year end probably \$25,000,000. The increase in both districts is 70%. We are trying to change only the 522(d) section of the federal code. Fifteen states already have this type of bill.

NO OPPONENTS:

QUESTIONS FROM THE COMMITTEE:

SENATOR KOLSTAD: If you computed the maximum in each category, what kind of a net worth could you come up with. There was discussion about the amounts of federal and state.

MR. ALKE: You can compute the large items, and he went on to quote amounts that could be possible.

SENATOR GOODOVER asked about the program "60 Minutes" on bankruptcy. If this will address an abuse then I am for this bill if it will do it.

SENATOR DOVER led a discussion about the dollar amounts, and what you can keep, such as an elaborate stereo-if you could keep something like that. Then followed discussion about life insurance and if it is exempt, and exactly what was meant by the "unmatured no limit cash value of \$4,000".

SENATOR KOLSTAD: If this bill passes, then a person would not be subject to the federal, is this correct.

MR. ALKE: Yes, there is one general condition under the Montana exemption, such as a 1/2 exemption and the necessities of life. He gave examples.

Discussion about the law and which is more liberal, the state or the federal. Under the federal law it converts to cash value but under the state it is merely an exemption.

REPRESENTATIVE BERGENE closed. In reality, we should work to keep the state statutes and then work to clear them up. She discussed the bill introduced by Mr. Kemmis and what it would do, and what it has expanded. A debtor should consider several things before filing bankruptcy and the creditors need protection.

There was no further discussion and the hearing closed on House Bill No. 495.

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HOUSE BILL NO. 510: Representative Lory, District 99, stated that the bill was introduced at the request of the Department of Administration. This bill allows a contractor contracting with the state or other governmental entities to post, in lieu of a surety bond, cash, a cashier's or certified check, bank draft, certificates of deposit, or money market certificates equal to the contract sum. On a surety bond, the bill limits the bond to licensed surety companies. He discussed the amounts of the contractors and the various methods of bonding. He discussed the money market and how a contractor can make a bond out to himself. He quoted the present law, and pointed out the changes.

NO OTHER PROPONENTS:

NO OPPONENTS:

QUESTIONS FROM THE COMMITTEE:

SENATOR LEE asked about the language on page 1 about surety companies and Greg Petesch, the staff attorney explained.

General discussion followed this.

Surety just means a guaranteed bond by whoever decides to do it.

General discussion followed about possible abuses.

SENATOR DOVER commented that in lieu of a bond, he must put up the full amount, that is the present law.

SENATOR LEE: The problem you will get into is that you will not have any small contractors that can do government jobs. He gave several examples.

REPRESENTATIVE FABREGA having finally arrived said that the state or issuing entity could deny it. You can be using a certificate of deposit and earn your interest. It can actually help you offset the cost.

SENATOR LEE mentioned what could happen that he was worried about. Discussion followed his statement and then followed general discussion about the bonding companies.

REPRESENTATIVE LORY said he believes this is an improvement over a personal surety.

The hearing closed on House Bill No. 510.

The regular meeting adjourned at 11:15 a.m.