

MINUTES OF THE JUDICIARY COMMITTEE  
January 10, 1983

The meeting of the House Judiciary Committee was called to order by Chairman Brown at 9:00 a.m. in Room 224A of the Capitol. All members were present. Brenda Desmond, Legislative Council, was also present.

HOUSE BILL 71

REP. ABRAMS, sponsor, stated House Bill 71 is to establish a filing fee to be paid to the Clerk of the District Court for the filing of certain items by a domiciliary foreign personal representative of the estate of a nonresident decedent.  
EXHIBIT A.

REP. ABRAMS further stated the bill is at the request of the Association of Clerks of the District Court and the Attorney General's office.

CHAIRMAN BROWN stated CLARA GILBREATH, Montana Association of Clerks of the District Court, was in favor of the bill. Due to a misunderstanding about the time the bill was scheduled for hearing, she was unable to stay and testify. Before she left, she told the Chairman that processing the necessary paperwork is the same no matter if the person died within the state or outside the state. Therefore, the bill would help the Clerks of the Court pay the costs of the paperwork involved.

There were no further proponents.

There were no opponents.

REP. ADDY asked if the fee noted in the bill is reasonable.  
REP. ABRAMS replied the fee recommended is similar to other fees for applicable work already in the statute.

It was explained to the committee that "domicile" is one's legal residence. The bill refers to the estate of a nonresident who has died outside of the state but has property in the state.

There were no further questions. The hearing on the bill closed.

HOUSE BILL 61

REP. WALDRON, sponsor, stated House Bill 61 would allow the videotaping of incest victims. The videotaping would take place in the judge's chambers and would not be open to the public. Videotaping of victims minimizes the number of times a victim must recount the events relating to an alleged crime. This is psychologically important, especially in the cases of young children.

STACY FLAHERTY, Women's Lobbyist Fund, was a proponent of the bill. EXHIBIT B.

MARK MURPHY, County Attorneys, was also in favor of the bill. MURPHY proposed, however, the bill be amended to include victims of deviate sexual conduct. He felt that it would be easier for the victim to testify in a small group. The prosecution and the accused's attorney would both be present during the taping; therefore, the victim could be cross-examined.

There were no further proponents.

There were no opponents.

In closing, the sponsor stated he had no objection to the proposed amendment.

Section 45-5-505, concerning deviate sexual conduct, was read to the committee.

REP. J. BROWN asked about the actual videotaping. MURPHY replied in small counties it is sometimes necessary to call someone in to do the taping. Many times the sheriff's office is asked to do the taping providing the person running the equipment does not offend the victim. The tape is then kept for seven years as part of the official record. In cases of appeal to higher courts, the tapes are then used as evidence.

There were no further questions. The hearing on House Bill 61 ended.

#### HOUSE BILL 53

REP. BERGENE, sponsor, stated the bill's purpose is to provide a specific civil remedy for issuance of a check dishonored for lack of funds or no account, and setting forth additional damages that may be recovered. EXHIBIT C.

GEORGE ALLEN, Montana Retail Association, was in favor of the bill. EXHIBIT E.

CHARLES BROOKS, Gibson Discount, was also in favor of House Bill 53. BROOKS stated his type of business appeals to the masses. Sixty-two percent of his customers pay for merchandise by check. In 1982 approximately \$55,000 in checks were returned by the bank to his stores as nonsufficient funds. Employees are trained and use every step possible to prevent the usage of bad checks. Only 37% of the checks marked NSF are actually recovered. BROOKS stated collection agencies are used, which helps shift the burden from his employees. EXHIBIT F.

STAN JOHNSON was also in favor of the bill and agreed with previous testimony.

MIKE MCCABE, Lewis & Clark County Justice of the Peace, supported the bill. The bill would shift the burden from the counties to the retailers. It costs approximately \$10.00 to \$25.00 to file a civil action. He felt the practical approach is as in the criminal statute, 45-6-316, which provides for a maximum penalty of \$500.00 and six months imprisonment. If after notice the person does not make the check good, according to subsection 2, the check is NSF. County attorneys will prosecute. A warrant of arrest may be issued. There is then the added cost of the sheriff delivering the warrant. A plea of guilty or not guilty would be entered and a possible jury trial could result. In most cases it is hard to collect the fine of \$500.00 when the party cannot even pay the \$25.00 check. Approximately 96% of the bad check writers are first offenders. The other 4% are persistent offenders.

RALPH LEWIS, representing the Montana Landlords Association, supported the bill. In Billings the county attorney will not prosecute a person who pays his rent with a bad check.

JOHN CADBY, Montana Bankers Association, stated he also supports the bill.

There were no further proponents.

There were no opponents.

REP. BERGENE summarized the bill. EXHIBIT C. Amendments to the bill were given to the committee. EXHIBIT D.

REP. J. BROWN asked about the registered mail and certified mail section of the bill. The sponsor replied notice could be sent to the violator by registered or certified mail. However, that requirement was not put into the statute because sometimes people will not pick up registered or certified mail because they know what it contains. The five day notice period runs from the day the letter is sent.

ALLEN stated the businessmen do not want to lose their customers, especially since most are first time offenders. Additionally, the person is notified by his bank of the overdraft.

REP. FARRIS was in favor of the bill. She asked what the chances were of recovering the money owed when one reason people write bad checks is that they don't have any money. REP. BERGENE felt that if the statute were posted at the businesses, it would be a deterrent, which is one main purpose of the bill. It also gives the businessmen the ability to file suit.

BROOKS stated the average bad check is between \$5.00 and \$30.00. The \$100 penalty would be a deterrent. Most businesses are just interested in obtaining what is owed them and not in the penalty money.

REP. J. BROWN asked if the retailer would have to hire an attorney to file a suit against the person who wrote the check. MCCABE replied the easiest way to handle the case would be in Small Claims Court, where it is not necessary to have an attorney.

REP. JENSEN asked how often a civil penalty exceeding \$100.00 would be collected. MCCABE replied that was hard to answer. Check Rite has reduced his caseload by about 30%. He would anticipate an average of 50 to 60%.

REP. KEYSER asked by what percentage bad check writing has been reduced in Idaho where similar legislation has been passed. ALLEN did not know the exact figure, but estimated between 30 to 50%.

REP. EUDAILY asked if a person paid the retailer within the five day period would any action be taken. The answer was no.

When asked how this would apply to stolen checks, MCCABE replied generally a person files notice with the bank. It would be considered forgery and be a different situation.

REP. RAMIREZ was concerned with the five day notice. He stated most county attorneys require a ten day notice instead of a five day notice. REP. BERGENE replied that the merchants would probably want the notice to be a ten day notice, but the five day notice was suggested to make the bill conform to the criminal statute.

REP. JENSEN asked about the NSF problem for rental payment in Billings. LEWIS replied he did not know the exact figure. Many landlords, however, have called him asking for advice on the matter. Eviction is about the only way available to try and collect pastdue rent when a landlord has been given bad checks.

There were no further questions on House Bill 53.

The committee then went into executive session.

EXECUTIVE SESSION

HOUSE BILL 53

REP. JENSEN moved DO PASS. REP. KEYSER seconded the motion.

REP. EUDAILY moved the amendment of the bill providing an immediate effective date. (Amendment 2, as on EXHIBIT D, was not included in the motion). REP. ADDY seconded the motion.

REP. BERGENE stated the title should state "an effective date" and not "an immediate effective date". The motion was amended as such.

All were in favor of the amendment.

REP. KEYSER moved DO PASS AS AMENDED. REP. JENSEN seconded the motion.

REP. HANNAH was concerned with the Friday deposit and the writing of a check on Saturday. Perhaps there could be a mix-up in the bank when there actually are funds available to cover outstanding checks. REP. JENSEN stated the bank can remedy that action in favor of the customer. REP. KEYSER further stated there is the ten days before action can be taken under the bill.

All were in favor of the motion. HOUSE BILL 53 left the committee as DO PASS AS AMENDED.

HOUSE BILL 71

REP. JENSEN moved DO PASS, seconded by REP. SPAETH.

REP. HANNAH was concerned with the \$35.00 fee. REP. SPAETH responded the fee is acceptable.

The question being called, HOUSE BILL 71 received a DO PASS confirmation from the committee.

HOUSE BILL 61

REP. BERGENE moved DO PASS. REP. IVERSON seconded the motion.


REP. ADDY moved the bill be amended to include 45-5-505 concerning victims of deviate sexual conduct. It was also moved that the title be so amended. The motion passed unanimously.

Judiciary Committee  
January 10, 1983  
Page 6


REP. BERGENE moved HOUSE BILL 61 DO PASS AS AMENDED.  
It was seconded by REP. JENSEN. The bill unanimously  
PASSED AS AMENDED.

CHAIRMAN BROWN noted David Niss would be at the January  
12, 1983 meeting to clarify House Bill 47. REP. ADDY  
noted he would have an amendment prepared for the bill.

The meeting adjourned at 10:10 a.m.



DAVE BROWN, Chairman



Maureen Richardson, Secretary

# STANDING COMMITTEE REPORT

January 10, 19 83

MR. **SPEAKER**

We, your committee on **JUDICIARY**

having had under consideration **HOUSE** Bill No. **53**

**First** reading copy ( **White** )  
Color

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A CIVIL REMEDY FOR THE ISSUANCE OF A CHECK DISHONORED FOR LACK OF FUNDS OR BECAUSE THE ISSUER HAS NO ACCOUNT WITH THE DRAWEE; SETTING FORTH DAMAGES THAT MAY BE RECOVERED; AND AMENDING SECTION 27-1-312, MCA."

Respectfully report as follows: That **HOUSE** Bill No. **53**

## BE AMENDED AS FOLLOWS:

1. Title, line 8.

Following: "27-1-312, MCA"

Strike: "."

Insert: "; AND PROVIDING AN EFFECTIVE DATE."

2. Page 2.

Following: line 16

Insert: "Section 3. Effective date. This act is effective on passage and approval."

## AND AS AMENDED

DO PASS

# STANDING COMMITTEE REPORT

January 10,

19 83

MR. SPEAKER

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 71

First reading copy ( white )  
Color

A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH A FILING FEE  
TO BE PAID TO THE CLERK OF THE DISTRICT COURT FOR THE FILING OF  
CERTAIN ITEMS BY A DOMICILIARY FOREIGN PERSONAL REPRESENTATIVE  
OF THE ESTATE OF A NONRESIDENT DECEDENT; AMENDING SECTION  
25-1-201, MCA."

Respectfully report as follows: That HOUSE Bill No. 71

DO PASS

  
DAVE BROWN,

Chairman.



# STANDING COMMITTEE REPORT

January 10,

1983

MR. **SPEAKER**

We, your committee on **JUDICIARY**

having had under consideration **HOUSE** Bill No. **61**

**First** reading copy (White)  
Color

**A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW THE TESTIMONY OF  
INCEST VICTIMS TO BE VIDEOTAPED FOR EVIDENTIARY PURPOSES IN THE  
SAME MANNER AS THE LAW NOW PROVIDES FOR THE VIDEOTAPING OF  
VICTIMS OF OTHER SEXUAL CRIMES; AMENDING SECTION 46-15-401, MCA."**

Respectfully report as follows: That **HOUSE** Bill No. **61**

**BE AMENDED AS FOLLOWS:**

**1. Title, line 5.**

**Following: "VICTIMS"**

**Insert: "AND VICTIMS OF DEVIATE SEXUAL CONDUCT"**

**2. Line 13.**

**Following: "45-5-503,"**

**Insert: "45-5-505,"**

**DO PASS AS AMENDED**

NB 71  
Exhibit A  
1/10/83

TESTIMONY

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, FOR THE RECORD MY NAME IS HUBERT ABRAMS, REPRESENTATIVE DISTRICT #56.

HOUSE BILL 71 IS A BILL FOR AN ACT TO ESTABLISH A FILING FEE TO BE PAID TO THE CLERK OF THE DISTRICT COURT FOR THE FILING OF CERTAIN ITEMS BY A DOMICILIARY FOREIGN PERSONAL REPRESENTATIVE OF THE ESTATE OF A NON-RESIDENT DECEDENT, AMENDING SECTION 25-1-201, M.C.A.

THIS BILL, AMENDING SECTION 25-1-201, M.C.A., WAS REQUESTED BY A CLERK OF DISTRICT COURT WHO STATED THAT THERE IS NO STATUTORY AUTHORITY ALLOWING THE CLERK OF COURT TO CHARGE A DOMICILIARY FOREIGN REPRESENTATIVE FOR FILING AUTHENTICATED COPIES OF HIS APPOINTMENT AND DOCUMENTS INCIDENT THERETO: THAT THE DOMICILIARY FOREIGN PERSONAL REPRESENTATIVE OF THE ESTATE OF A NON-RESIDENT DECEDENT WHO WISHES TO RECEIVE PAYMENT AND DELIVERY AS DESCRIBED IN SECTION 72-4-306, OR TO EXERCISE THE POWERS OVER ASSETS DESCRIBED IN SECTION 72-4-301 SHALL FILE IN DUPLICATE WITH A DISTRICT COURT IN THIS STATE IN A COUNTY IN WHICH PROPERTY BELONGING TO THE DECEDENT IS LOCATED, AUTHENTICATED COPIES OF HIS APPOINTMENT ANY ANY OFFICIAL BOND HE HAS GIVEN, AN INVENTORY AND APPRAISAL OF THE PROPERTY OF THE NON-RESIDENT DECEDENT LOCATED IN THIS STATE.....

UNDER SECTION 25-1-201 M.C.A., THE CLERK OF THE DISTRICT COURT IS MANDATED TO COLLECT FEES WHICH ARE LISTED IN THIS BILL, PAGE 1, SECTION 1, THROUGH LINE 17, PAGE 2. THE AMENDMENT ON PAGE 2, LINE 18, SUBSECTION (O) DIRECTS THE CLERK OF DISTRICT COURT TO CHARGE A FEE OF \$35 FOR THIS SERVICE.

## TESTIMONY

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, FOR THE RECORD MY NAME IS HUBERT ABRAMS, REPRESENTATIVE DISTRICT #56.

HOUSE BILL 71 IS A BILL FOR AN ACT TO ESTABLISH A FILING FEE TO BE PAID TO THE CLERK OF THE DISTRICT COURT FOR THE FILING OF CERTAIN ITEMS BY A DOMICILIARY FOREIGN PERSONAL REPRESENTATIVE OF THE ESTATE OF A NON-RESIDENT DECEDENT, AMENDING SECTION 25-1-201, M.C.A.

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UNDER SECTION 25-1-201 M.C.A., THE CLERK OF THE DISTRICT COURT IS MANDATED TO COLLECT FEES WHICH ARE LISTED IN THIS BILL, PAGE 1, SECTION 1, THROUGH LINE 17, PAGE 2. THE AMENDMENT ON PAGE 2, LINE 18, SUBSECTION (O) DIRECTS THE CLERK OF DISTRICT COURT TO CHARGE A FEE OF \$35 FOR THIS SERVICE.

HB 61  
Exhibit B  
1/10/83

TESTIMONY OF STACY A. FLAHERTY, WOMEN'S LOBBYIST FUND, ON H.B. 61, HEARING OF  
THE HOUSE JUDICIARY COMMITTEE, JANUARY 10, 1983.

For the record my name is Stacy Flaherty. I am testifying on behalf of the  
Womens's Lobbyist Fund.

The Women's Lobbyist Fund strongly supports H.B. 61. By allowing the incest  
victim's testimony to be videotaped and submitted as valid testimony, more cases  
would come to trial. Many cases do not come to trial because the victim fears  
exposing a crime committed by someone on whom they are dependent while they sit  
before a crowded courtroom. Videotaping would alleviate the trauma and intimidat-  
tion of testifying in court.

Videotaping is the only way to protect the victim, who, in most cases, is  
a child.

The number of incest victims has been increasing each year. According to  
the Montana Incest Task Force, 25% of minors (male and female) have been victims  
of incest.

Montana has allowed the videotaping of testimony by victims of rape. We  
feel that the law should also protect incest victims and allow the testimony of  
incest victims to be videotaped for evidentiary purposes.

HB 53  
1/10/83 EXHIBIT  
C

HB 53 PROVIDES AN ADDED REMEDY TO AN EXISTING SITUATION WHICH HAS GRADUALLY REACHED EVER MORE SERIOUS PROPORTIONS.

THE PROBLEM IS BAD CHECKS. A BUSINESS MERCHANT HAS CURRENTLY THE OPTION TO TAKE AN ISSUER TO CRIMINAL COURT OR TO CIVIL COURT.

BECAUSE CRIMINAL COURT BRINGS FAR MORE COST TO THE BUSINESS PERSON THAN SMALL CLAIMS COURT DOES, IT WOULD SEEM SMALL CLAIMS COURT OR JUSTICE OF THE PEACE COURT WOULD BE GIVEN THE NOD MOST OFTEN.

HOWEVER, THE MONTANA STATUTES DO NOT YET PROVIDE FOR A PENALTY THAT WILL MORE OFTEN THAN IT DOES NOW, AID IN RECOUPING MONETARY LOSSES.

THE WITNESSES YOU WILL HEAR REGARDING THIS BILL ARE PEOPLE WHO HAVE THE DAILY CONFRONTATION WITH THE PROBLEM.

TRB/mac

HB 53  
1/10/83  
Exhibit C  
page 2

EMPHASIS FOR "SUM UP" . . .

- 1) POSTING OF STATUTES.
- 2) IT IS THE DECISION OF THE BUSINESS PERSON THAT WILL ULTIMATELY RESULT EITHER IN A CRIMINAL SUIT OR CIVIL SUIT AND CIRCUMSTANCES INVOLVED.
- 3) COUNTY ATTORNEYS THAT WRITE "SUPPORT" LETTERS ARE RELIEVED TO SEE LEGISLATION THAT WILL AID TO REDUCE THE "BAD CHECK" LOAD AND MAKE TIME FOR OTHER PRIORITY CASES.
- 4) SERIOUS THOUGHT AND PLANNING ON THE PART OF RETAIL PERSONS AND LAW ENFORCEMENT PEOPLE HAS GONE INTO THIS BILL. THOUGH PERHAPS NOT A TOTAL ANSWER, THEY WOULD BE GRATEFUL FOR THE OPPORTUNITY TO MAKE IT WORK.
- 5) CONVERSATIONS LEAD ME TO BELIEVE THAT BUSINESS PEOPLE ARE INTERESTED IN LISTENING TO TROUBLED PERSONS FIRST BEFORE MAKING THE DECISION TO FILE SUIT.
- 6) KEEP IN MIND THAT HB 53 TALKS TO THE OCCASIONAL GIVER OF A BAD CHECK . . . THE PRESENT LAW REMAINS INTACT FOR THE PROSECUTION OF THE PROFESSIONAL BAD CHECK PASSER.

TRB/mac

Exhibit D

HB 53

4/10/83

Amendments to House Bill 53

1. Title, line 8

Following: "27-1-312, MCA"

Strike: "."

Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

2. Page 2, line 4.

Following: "than"

Strike: "10"

Insert: "5"

3. Page 2

Following: line 16

Insert: "Section 3. Effective date. This act is effective on  
passage and approval."



Exhibit E  
1/10/83

Mr. Chairman and Members of the Committee:

My name is George Allen and I am the lobbyist for the Montana Retail Association. I am here in support of the Dishonored Check Bill, House Bill #53.

Attached to a copy of my testimony, please find letters from County Attorneys from around the state, all endorsing this bill.

One may ask if there is a need for this legislation. My answer is definitely "YES."

Also attached to my testimony, you will find a letter from the Northwestern Bank of Helena. In their letter they tell us that over the last six months there have been \$10,719,231.00 returned in insufficient funds and no-account checks, with a total of 26,924 checks. This averages out to be \$1,786,538.50 per month and 4,487 checks. Considering that these figures are just from the Helena area, you can see what a serious problem we have state wide.

What will House Bill #53 accomplish? Well, it allows the receiver of a dishonored check the option to choose which court he would take his claim to. If this bill passes, the receiver of a dishonored check could go to the civil court and get a judgement against the issuer of that check. He could claim three times the value of the check or \$100, whichever is greater, with a maximum of \$500.

The state of Idaho passed this bill two years ago. Since that time the amount of dishonored checks has been reduced by a significant number in that state.

There still would remain on the books the criminal law dealing with a professional. We don't want to disturb that law.

The big percentage of people that pass an insufficient funds check are not criminals and we feel they should not be treated as one. This bill would allow for civil actions instead of criminal actions.

When we started working on this problem we knew it was serious, but we did not realize just how serious. Dishonored checks are being used as a vehicle to finance, interest free, everything from groceries to clothing.

The big majority of the ten million dollars returned to the Helena businessman during the past six months was honored by the customer, but not until the merchant held the check for a period of time and contacted the customer by phone calls or letters.

We feel this bill will be a big deterrent to this serious problem.

Respectfully Submitted,

George E. Allen  
Executive Vice-President  
Montana Retail Association

# Lewis and Clark County

Courthouse — 443-1010  
Helena, Montana 59601

MIKE MCGRATH  
~~Charles A. Graveley~~  
County Attorney

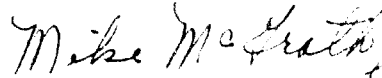
January 5, 1983

Montana Retail Association  
34 West 6th Avenue  
Helena, MT 59601

Dear Sir:

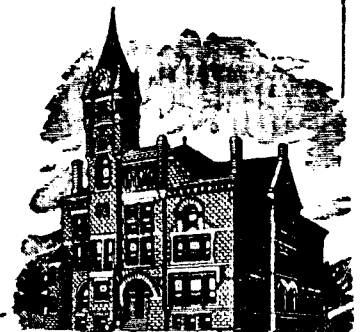
I have reviewed the provisions of House Bill 53  
as introduced in the 48th Montana Legislative Assembly  
and fully support the concept of the bill as introduced.

Sincerely,



MIKE MCGRATH, County Attorney  
Lewis and Clark County

MM/sj



# MISSOULA COUNTY

OFFICE OF THE ATTORNEY  
MISSOULA COUNTY COURTHOUSE  
MISSOULA, MONTANA 59801  
TELEPHONE: (406) 721-5700

**ROBERT L. DESCHAMPS III**

COUNTY ATTORNEY

December 29, 1982

George E. Allen  
Executive Vice President  
Montana Retail Association  
P. O. Box 440  
Helena, MT 59624

Dear Mr. Allen:

I have been given your letter of December 10 regarding your proposed dishonored check Bill. While I certainly have no objections to this proposed legislation, and don't mind saying so, I am not certain that it will be an effective deterrent to the bad check problem. The primary difficulty is that in order to recover anything the merchant is still going to have to bring a law suit to do it. Furthermore, the threat of a money judgment may not slow down most check writters since most of them don't have anything any way.

I do have one substitute suggestion. Your proposed Bill requires a ten day notice to the check writer as a condition precedent to the filing of the law suit. Montana's criminal statute regarding bad checks requires only a five day demand letter. I recommend that your time span be shortened to five days to prevent confusion and the requirement of sending multiple notices to check writters. Ideally, one written notice with one five day time frame that applies to both the civil and criminal remedies should be used. This will also be less expensive for the merchants since at least in this county we required the written notice to be sent "Certified Mail - Return Receipt Requested" so that we can establish that the check writer actually did get the written notice.

Thank you for thinking of us when you sought input on your Bill. If this office can be of any additional assistance on this matter or any other matter of mutual concern, please do not hesitate to contact me.

Sincerely,

*Robert L. Deschamps III*  
Robert L. Deschamps III  
Missoula County Attorney

RLD:lh

cc: Gene Jarvis, Manager  
Sears Roebuck & Co.

OFFICE OF THE COUNTY ATTORNEY  
J. FRED BOURDEAU  
CASCADE COUNTY COURT HOUSE  
GREAT FALLS, MONTANA 59401  
TELEPHONE (406) 761-6700

December 27, 1982

Ms. Irene G. Russell  
Montana Retail Association  
P. O. Box 440  
Helena, Montana 59601

Dear Ms. Russell;

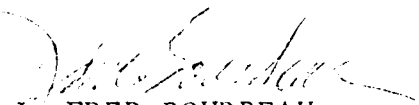
Thank you for your letter of December 17, 1982, and the opportunity to look at the Dishonored Check Bill the Association is endorsing.

Bad checks are a considerable problem. Though I have sought to prosecute as many bad check writers as possible under the criminal bad check law, the resources of the county attorney's office which can be devoted to this problem are limited. I am aware that a number of businesses simply write off bad checks because the cost of collection or prosecution far exceeds the value of the check.

A remedy such as the Dishonored Check Bill proposes would encourage businesses to pursue bad checks issued to them by defraying some of the cost of suit or collection. Those efforts would supplement criminal prosecutions and the exemplary penalties in the Bill might be an effective deterrent to future misconduct.

For those reasons I believe that passage of this legislation would address a very real problem in an effective manner. The only suggestions I would offer are that you consider the inclusion of stop-payment checks, that the words "check or other order for payment of money" be used so that there would be no question as to the Bill's inclusiveness, and that the word "depository" be used in place of "drawee" since the former appears in the U.C.C.

Sincerely,

  
J. FRED BOURDEAU  
CASCADE COUNTY ATTORNEY

JFB/CCB/mb

OFFICE OF  
COUNTY ATTORNEY  
RICHLAND COUNTY  
SIDNEY, MONTANA

December 21, 1982

George E. Allen - Executive Vice-President  
Montana Retail Association  
Box 440  
Helena, MT 59624

Re: Lola Hansen

Dear Mr. Allen:

Request has been made of this office for approval of proposed legislation pertaining to a civil remedy for the issuance of a bad check.

This office has no objections to the bill which I presume would be in addition to the criminal remedies now provided by State law.

Sincerely yours,



V. G. KOCH

VGK/mb

OFFICE OF THE COUNTY ATTORNEY

County of Hill

312 THIRD STREET  
HAVRE, MONTANA 59501  
265-4364

RONALD W. SMITH  
COUNTY ATTORNEY

DAVID G. RICE  
DEPUTY COUNTY ATTORNEY

GLEN DRIVENESS  
DEPUTY COUNTY ATTORNEY

December 21, 1982

Mr. George E. Allen  
Executive Vice-President  
Montana Retail Association  
P.O. Box 440  
Helena, Montana 59624

Dear Mr. Allen:

Your proposed legislation by the Montana Retail Association concerning civil remedies for the issuance of a check dishonored for lack of funds has been given to me by Dwayne Kretchmer of Havre, Montana. Our office discussed the proposed legislation and as you recall I visited with you by telephone. We certainly find that the proposed legislation has merit.

For to long the County Attorneys have been utilized by creditors, merchants and other business people as a means for collecting money on checks which have been dishonored even though the law forbids the County Attorneys to do so. This proposed bill will give the person who receives the check a chance to be awarded damages based on the amount of money the check is written for.

As I discussed with you and as you are aware I support legislation to abolish the bad check criminal statute except for checks written as a common scheme or plan or felony forgery checks. One comment I would make concerning this proposed bill is that we think that there should be some language indicating that once the person holding the dishonored check has selected a remedy, either criminal or civil they are not then allowed to pursue the other remedy. In other words if he files a criminal charge he would not then be able to pursue civil remedies, likewise if he pursued the civil remedies he would not be able to then file criminal charges. I believe this would then negate any thoughts of malicious prosecution. However, I do believe that this is a step in the right direction to help alleviate the case load that we County Attorneys experience with bad checks.

In closing I would like to suggest that if you need any assistance or support in presenting any testimony to the committee to which the bill will be assigned please do not hesitate to contact my office.

**NORTHWESTERN BANK**

350 North Last Chance Gulch  
P.O. Box 597  
Helena, Montana 59624  
406/442-5050



January 6, 1983

Mr. George Allen  
Montana Retail Association  
34 W. Sixth Avenue  
Helena, MT 59601

Dear George:

The following is a list of numbers and dollars of returned checks from the Helena area banks and savings and loans during the period from June through December, 1982.

<u>Week of:</u>	<u>Total #</u>	<u>Total \$</u>
June 4	805	\$133,746
June 11	975	\$136,440
June 18	831	\$198,556
June 25	1091	\$139,075
July 2	(figures not available)	
July 9	783	\$184,931
July 16	1069	\$404,650
July 23	1422	\$215,512
July 30	1087	\$206,853
August 9	902	\$256,483
August 6	1109	\$290,902
August 20	914	\$357,757
August 27	954	\$264,949
September 3	918	\$686,025
September 10	550	\$309,781
September 17	951	\$269,252
September 24	871	\$378,827
October 1	1046	\$142,254
October 8	841	\$156,485
October 15	789	\$203,183
October 22	611	\$318,539
October 29	1240	\$235,482
November 5	954	\$3,761,705
November 8	781	\$140,430
November 19	986	\$240,186
November 26	845	\$211,997
December 3	865	\$136,365
December 10	965	\$361,716
December 17	886	\$289,220
December 24	883	\$87,930

Good luck with your effort, George. Please let us know if we can be of more help.

*George Allen*  
*Montana Retail Association*



House Bill #53  
Dishonored Check Bill

Mr. Charlie Brooks

EXHIBIT F  
1/10/83 HB 53

Mr. Chairman and Members of the Committee:

*vice President - Gibson*

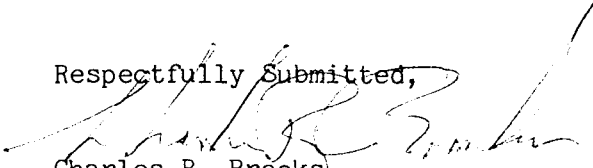
My name is Charles Brooks, ~~owner~~ of the Gibson Discount Stores in Billings, Bozeman and Helena. I am here to support House Bill #53, the Dishonored Check Bill.

Our business is the type where we appeal to the masses. We survive on volume sales with a low margin of mark-up. Due to the fact that we are a volume sales store, we must honor literally hundreds of checks each day. Our employees are well trained and they require adequate identification on every check they approve. We implement every precaution known to us in the industry to prevent accepting a bad check. Unfortunately, at times, the customer is smarter than we are.

The volume of dishonored checks that are returned to us each week is staggering and we desperately need some help from the legislature, giving us the tools to work with.

With proper store signing and educational materials available to our customers, we feel House Bill #53 will be a deterrent, resulting in fewer returned checks. I strongly urge your support for House Bill #53.

Respectfully Submitted,

  
Charles R. Brooks  
Gibson Products Company

WITNESS STATEMENT

NAME JOHN CADDY BILL No. HR 5-3  
ADDRESS 706 HARRISON, HELENA DATE 1-10-83  
WHOM DO YOU REPRESENT MT BANKERS ASSN  
SUPPORT X OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

WITNESS STATEMENT

NAME Michael T. McCabe BILL No. HB 53  
ADDRESS 1733 WENDE, HELENA DATE 1-10-83  
WHOM DO YOU REPRESENT SELF  
SUPPORT / OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

WITNESS STATEMENT

NAME Stacy A. Flaherty BILL No. HB61  
ADDRESS Helena DATE \_\_\_\_\_  
WHOM DO YOU REPRESENT Women's Lobbyist Fund  
SUPPORT ✓ OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

WITNESS STATEMENT

NAME George E. Allen BILL No. HB 53  
ADDRESS HELENA MT- DATE 1-10-83  
WHOM DO YOU REPRESENT Montana Trout Ranch  
SUPPORT X OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

WITNESS STATEMENT

NAME Charles R. Brooks BILL No. HB 53  
ADDRESS 2226 Fairview Pl. B. Hills DATE 1-10-83  
WHOM DO YOU REPRESENT Gibson's Discount Centers  
SUPPORT HB 53 OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

WITNESS STATEMENT

NAME Stanley A Johnson BILL No. HB 53  
ADDRESS 340 N. Last Chance Gulch DATE 1-10-83  
WHOM DO YOU REPRESENT J.C. Penney Co.  
SUPPORT X OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

HOUSE                      JUDICIARY                      COMMITTEE

HOUSE

JUDICIARY

COMMITTEE

House Bill 61

Date January 10, 1983

SPONSOR Rep. Waldron

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.



# VISITORS' REGISTER

HOUSE                      JUDICIARY                      COMMITTEE                     

House Bill 71

Date January 10, 1983

Rep. Abrams

NAME

RESIDENCE

REPRESENTING

SUPPORT

OPPOSE

*Bara Schmitt*

*L & C Co*

*Mr. Assoc. Clerk  
of Court*

X

*Rep. Hubert Abrams*

*Dist H-5-C*

X

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

(

COMMITTEE

Date January 10, 1983

Rep. Bergene

George E Allen	1600 Highland Mont. Retail Assn	Mont. Retail	X
Stanley A. Johnson	4444 Green Meadow Helena Mont	J C Penney Co	X
Charles R. Brooks	2226 Fairview Pl Billings MT	Gibson Disc	X
Joseph R. O'Keefe	1519 Milwaukee Rd Helena MT	Mela Chamber	X
Yoghuel J. McCh	1733 Wenne Helena, MT 59604		
<del>Ralph Lewis</del>	<del>602 Grand Billings Mt.</del>	<del>SS/F</del>	<del>X</del>
Ralph Lewis	602 Grand Billings Mt.	Mont. Landlords	X
JOHN CADDY	706 HARRISON, HELENA	MT BAKERS ASSN	X
MARK MURPHY	HELENA	COUNTY ATTORNEYS	X

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.