

MINUTES OF THE JUDICIARY COMMITTEE  
February 19, 1983 - P.M.

The meeting of the House Judiciary Committee was called to order to Chairman Dave Brown in room 224A of the capitol building, Helena, Montana at 1:22 p.m.

Representative Dave Brown passed out copies of testimony offered on HOUSE BILL 831, presented by IRVIN E. DELLINGER, Executive Secretary for the Montana Building Dealers Association. See EXHIBIT A.

EXECUTIVE SESSION

HOUSE BILL 811

REPRESENTATIVE KEYSER moved that the bill DO PASS. The motion was seconded by REPRESENTATIVE JENSEN. REPRESENTATIVE KEYSER moved that the bill be amended on page 3, line 10 by striking "by March 31 of each year" and inserting "annually" also on page 5 and in the title. REPRESENTATIVE JENSEN seconded. The motion carried unanimously. REPRESENTATIVE KEYSER moved that this bill DO PASS, AS AMENDED. The motion was seconded by REPRESENTATIVE JENSEN. The motion carried unanimously.

HOUSE BILL 812

REPRESENTATIVE JENSEN moved that this bill DO PASS, seconded by REPRESENTATIVE KEYSER. MS. DESMOND explained the amendments offered by Representative Shontz. See EXHIBIT B. REPRESENTATIVE JENSEN moved adoption of the amendment, seconded by REPRESENTATIVE ADDY.

REPRESENTATIVE HANNAH questioned what is the effect of that amendment. REPRESENTATIVE ADDY replied that it says that a purchaser under contract of deed is entitled to notice only when he has filed a notice of purchaser's interest with the county clerk and recorder.

REPRESENTATIVE HANNAH wondered if the holder of an unrecorded contract stands to be damaged by this bill. REPRESENTATIVE ADDY answered no that this bill neither helps nor hurts that person. Addy further stated that perhaps the holder of an unrecorded contract does not deserve to be helped since he has not bothered to file.

The motion on the amendment carried unanimously.

REPRESENTATIVE JENSEN moved that the bill DO PASS, AS AMENDED. The motion was seconded by REPRESENTATIVE BERGENE. The motion carried unanimously.

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HOUSE JOINT RESOLUTION 23

REPRESENTATIVE DAVE BROWN informed the committee that they had already adopted amendments on page 2, line 23 and were ready to consider the remainder of the bill.

REPRESENTATIVE RAMIREZ moved to amend the bill on page 2, line 1, after "activities" strike the balance of line 2 and insert "would help inmates make transition from correctional programs to the community at the time of their release". REPRESENTATIVE ADDY seconded the motion. The motion carried unanimously.

REPRESENTATIVE RAMIREZ moved to amend the bill on page 2, line 23, following "and" by striking the rest of the sentence and insert "to consider zoning classifications which will permit greater latitude in finding locations for prerelease centers. REPRESENTATIVE HANNAH seconded the motion.

REPRESENTATIVE RAMIREZ explained that he felt it would be better to specifically mention zoning, but not do it in a way that we are telling them what to do but to consider zoning classifications that might make it a little easier to find locations for prerelease centers. REPRESENTATIVE BERGENE said that after talking to REPRESENTATIVE RAMIREZ she felt that giving this latitude was a good idea.

REPRESENTATIVE JENSEN contended that it is important to try to establish these in a residential area and he would rather they were not segregated but were integrated into communities. REPRESENTATIVE BERGENE stated that it is better for a pre-release center to be close to downtown and that is such a basic tenet of a prerelease center.

A vote was taken on the amendment and it passed unanimously.

REPRESENTATIVE BERGENE moved that the resolution DO PASS, AS AMENDED. REPRESENTATIVE JENSEN seconded the motion. The motion carried with REPRESENTATIVE JAN BROWN and REPRESENTATIVE DAILY voting no.

HOUSE BILL 769

BRENDA DESMOND explained to the committee that this bill would permit a car repair shop to file a lien in the event of an unpaid bill by notifying the Division of Motor Vehicles in Deer Lodge

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REPRESENTATIVE EUDAILY moved that the bill DO PASS. REPRESENTATIVE HANNAH moved to table the bill, seconded by REPRESENTATIVE JENSEN. REPRESENTATIVE HANNAH said that he liked the idea, but he felt there was a major flaw in the bill in that under its provisions notice of the existence of the lien might not be given to a future buyer; and he thought it would be a major problem to fix it.

REPRESENTATIVE ADDY said that this bill makes him a little queasy explaining that they are giving a non-possessory lien, which could lead to breaches of peace.

A vote was taken and the motion carried, with REPRESENTATIVE EUDAILY voting no.

#### HOUSE BILL 761

REPRESENTATIVE ADDY moved to TABLE the bill. He stated that it is a great idea, that they probably are going to have to look at another workers' compensation judge someday, but that it is not in the cards with appropriations. REPRESENTATIVE KEYSER seconded the motion. The motion carried unanimously.

#### HOUSE BILL 796

REPRESENTATIVE ADDY moved that the bill DO PASS. The motion was seconded by REPRESENTATIVE JENSEN. REPRESENTATIVE DARKO moved the amendments proposed on this bill. REPRESENTATIVE FARRIS seconded the motion. The motion carried unanimously.

MS. DESMOND offered some amendments submitted by the sponsor, which would amend on page 7, line 16, after "6" insert a subsection (a) "subject to limitations in subsection (b)" and then on line 23 following that line, insert subsection (b) saying "in no case may the combined fine and surcharge imposed by a city or justice court exceed \$500.00." REPRESENTATIVE BERGENE moved the amendments and REPRESENTATIVE DARKO seconded.

REPRESENTATIVE SPAETH said that the maximum would not be more than the maximum right now. REPRESENTATIVE JENSEN questioned if \$500.00 is the maximum, does 10 per cent come out of that and the most that can be received is \$450.00. MS. DESMOND said that she was not sure what it would do. REPRESENTATIVE JENSEN wondered if the effect would be to limit the fine to \$450.00. REPRESENTATIVE KEYSER said that is exactly what it does.

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REPRESENTATIVE ADDY said that he wondered if that did not reduce the fine and he continued that it all depends on what the judge does.

REPRESENTATIVE HANNAH made a substitute motion to table this bill saying that we have amendments that strike a large portion of the bill, a substantive question as to whether or not local government will be able to receive the same amounts of cash and under the same time constraints. REPRESENTATIVE JENSEN seconded.

REPRESENTATIVE CURTISS contended that there were some things that were really valuable in this and an area that they really need to address but she thought it should be in the Department of Public Instruction.

REPRESENTATIVE DAVE BROWN said that this is the kind of bill that we need to treat the disease and not kick people because they have it. He commented that he felt bad about tabling this bill, but it just doesn't make it.

REPRESENTATIVE RAMIREZ advised the committee that if they needed another reason to table the bill, they had another bill where we had a surcharge and they killed the bill because the testimony from the justices and others was that the fine was going to be the same no matter what - that you are really cutting off the 10 per cent and taking it from the counties.

A vote was taken on the motion to TABLE and it carried with REPRESENTATIVE FARRIS, REPRESENTATIVE CURTISS, REPRESENTATIVE DARKO AND REPRESENTATIVE ADDY voting no.

REPRESENTATIVE FARRIS mentioned that in public hearing, they said that this was the most important health legislation of the session and, in her opinion, it should have gone to the floor so they could have looked at it there.

#### HOUSE BILL 831

REPRESENTATIVE JENSEN moved DO PASS and the motion was seconded by REPRESENTATIVE BERGENE. REPRESENTATIVE RAMIREZ made a substitute motion that the bill be TABLED. REPRESENTATIVE JENSEN seconded. The motion carried with REPRESENTATIVE KEYSER, REPRESENTATIVE SCHYE, REPRESENTATIVE FARRIS, REPRESENTATIVE BERGENE, REPRESENTATIVE DARKO, AND REPRESENTATIVE DAVE BROWN voting no.

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HOUSE BILL 828

REPRESENTATIVE CURTISS moved DO PASS. REPRESENTATIVE SPAETH seconded. REPRESENTATIVE DARKO made a substitute motion to TABLE the bill, which was seconded by REPRESENTATIVE ADDY.

REPRESENTATIVE SPAETH said that sometimes along the way we should look over these venue questions concerning state government and state government issues. He stated that right now venue is generally in the first judicial district and he thought this was somewhat unfair.

REPRESENTATIVE CURTISS indicated that there are some real concerns and that is the reason this bill was introduced and she felt that it was not right or fair for a person to have to come to Helena to defend themselves. She said that it comes back to the basic question of whose government is this - is it the state of Montana or is it the citizens of the state.

A vote was taken on the motion to TABLE and the motion carried with a tally of 11 for and 7 against. See Roll Call Vote.

HOUSE BILL 768

REPRESENTATIVE KEYSER moved DO PASS. REPRESENTATIVE BERGENE seconded the motion. Amendments to this bill were offered. See EXHIBIT C. REPRESENTATIVE CURTISS moved the amendments. REPRESENTATIVE HANNAH seconded the motion.

REPRESENTATIVE CURTISS explained that what this does, as drafted, is give the surveyors a blank check to come on anyone's property at any time and do as they please and she felt that some of those things could precipitate litigation.

REPRESENTATIVE SCHYE said that lots of times they use a point instead of a marker. REPRESENTATIVE CURTISS commented that it depends on what they are looking for - section corners or quarter corners.

REPRESENTATIVE KEYSER moved to amend on the line to identify the section marker after "section marker" insert "or points" to complete the survey.

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REPRESENTATIVE JENSEN wondered about the second amendment and he did not feel that it addressed the question. He explained that we are talking about some pretty fundamental rights here and whether people can invade their property. He said that there are a lot of ranches in this state that are owned by people who live a long ways away and the people who live on it certainly have the responsibility to protect it.

REPRESENTATIVE ADDY commented that he had some problems with the bill. He felt that twenty days would be more standard for a notice than fourteen days and some problems with how it was mailed. He moved to TABLE the bill. REPRESENTATIVE SPAETH seconded.

REPRESENTATIVE KEYSER voiced concern as he felt that the surveyor has a problem and sometimes by law, they have to survey and are required to survey and when people deny them the right, what are they to do.

REPRESENTATIVE RAMIREZ stated that the surveyors have been getting along for a long time without this and he felt that there was more than one starting point.

REPRESENTATIVE BERGENE stated that their point about undue expense to the landowner and their professional liability is at stake because their reports have to be so accurate was what she thought was the heart of the problem. She felt that the amendments seemed fairly good.

A roll call vote was taken on the motion to TABLE the bill and it carried 11 voting yes and 7 voting no. See ROLL CALL VOTE.

#### HOUSE BILL 845

REPRESENTATIVE ADDY moved that the bill DO PASS. The motion was seconded by REPRESENTATIVE JENSEN.

REPRESENTATIVE CURTISS wondered if we got a fiscal note. REPRESENTATIVE KEMMIS said that all he knew at this point about the fiscal impact was that there was anticipated federal revenue under a grant program that if it were obtained, the justice department would expect to use for these hearings. He also informed the committee that the bill includes a provision for payment of reinstatement of licenses and over

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the biennium, the anticipated net fiscal impact of the bill is in the neighborhood of \$200,000.00.

REPRESENTATIVE SPAETH stated that he had a lot of trouble with this bill, and his reasons are along the lines of Mr. Romine's testimony. He said that he did not mind them taking a license when they refuse to take a breathalyzer test but we are essentially concluding that you are guilty, but we are not sure that you are that guilty so there will be a lot of remedies to solve the problem until we determine for sure that you are guilty.

REPRESENTATIVE EUDAILY said that the guy that goes in and gives a sob story to the judge, the judge will give him a temporary permit so he can have his car to go to work. He wondered how is that fellow going to get to work if we put it in here that he can't.

REPRESENTATIVE KEYSER said that we now have a very loose law and he felt that if drunk driving makes things so tough, he would say "Tough." He felt that if we are going to make the DUI law work, then we have to put some teeth into it.

REPRESENTATIVE ADDY said that the only reason he would agree to mandatory minimum sentences in a bill like this is because he thinks it is a very serious problem. He felt that if a person has a drinking problem, it is not an excuse - he should get some counselling.

REPRESENTATIVE DAVE BROWN commented that he felt that they were dealing superficially with the problem; that they are putting on mandatory minimums that apply to everybody, no first exceptions; anybody that makes a mistake is guilty; penalties are stiff and the bottom line is they are not dealing with the problem.

REPRESENTATIVE JENSEN said that he also opposed this bill and for the reasons previously stated. He felt that people can get to work without a car. He also stated that the problem is just not addressed in this bill.

REPRESENTATIVE SPAETH moved that this bill be TABLED. REPRESENTATIVE JENSEN seconded the motion.

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REPRESENTATIVE ADDY contended that he felt that what they were doing when they put minimal mandatory minimums on this bill and it has not been done with other offenses, that you are saying that misconduct is O.K. as long as you have something to drink. He felt that this is exactly the wrong thing to say.

REPRESENTATIVE FARRIS said that she was uncomfortable with the presumption of guilt just because a person is arrested, but she wanted to point out the high number of deaths that come from this problem and she commented that the first time someone is arrested for this is not the first time they have done it in the vast majority of cases and this is an exception.

REPRESENTATIVE RAMIREZ said that he wanted to speak in favor of the motion to table. He contended that these probationary licenses are getting issued too easily and he felt that the court could issue probationary licenses in lieu of suspension on the condition that the driver attend an alcohol treatment program. He felt that this is the wrong approach to the problem and goes too far.

A vote was taken on the motion to TABLE and the motion carried 11 to 7. See Roll Call Vote.

#### HOUSE BILL 278

REPRESENTATIVE KEYSER moved that the bill DO PASS. The motion was seconded by REPRESENTATIVE HANNAH. The motion carried with REPRESENTATIVE DAVE BROWN voting no.

#### HOUSE BILL 808

REPRESENTATIVE SPAETH moved that the bill DO PASS. REPRESENTATIVE CURTISS seconded the motion.

REPRESENTATIVE DAVE BROWN moved to amend the bill and he explained that he would like to make all these statutes read the same in terms of application. He moved to amend the bill by inserting the language from Representative Kemmis's bill "Ways of the state open to the public means any highway, road, alley, lane, parking area, or other public or private place adapted and fitted for public travel that is



in common use by the public with the express or implied consent of the owner." He stated that all he was trying to do was protect the private property and he did not feel that you should be able to arrest the guy in the middle of his ranch. REPRESENTATIVE JENSEN seconded the motion.

REPRESENTATIVE KEYSER said that he could see where someone might be well loaded on his own property and come back onto the highway. He thought that if you were able to get him on the private ground, you could stop him from coming on the highway and getting somebody.

REPRESENTATIVE DARKO questioned what happened if you were the recipient of his joy and he was out tearing up your field. REPRESENTATIVE KEYSER said that you could not get him then. REPRESENTATIVE DAVE BROWN replied that he would be trespassing.

A vote was taken on the amendment and it was adopted. Those voting no were REPRESENTATIVE BERGENE, REPRESENTATIVE KEYSER, REPRESENTATIVE DARKO and REPRESENTATIVE FARRIS.

REPRESENTATIVE KEYSER moved to amend the bill on page 4, line 8 by striking everything after "61-8-403" down to line 20 in its entirety. If the other bill goes through, that language will be in effect and if it doesn't the rest of the language we have now in the laws will be in effect, he explained.

REPRESENTATIVE DAVE BROWN questioned MS. DESMOND if there was a direct conflict between the bill that just passed and this one. MS. DESMOND replied that she would say that there was a direct conflict. She stated that HB 278 eliminates probationary licenses - this is called temporary probational licenses - and she felt there was a conflict, at least in intent.

REPRESENTATIVE KEYSER said that he would still leave that amendment in and also the title.

REPRESENTATIVE RAMIREZ indicated that he wanted to support the amendment, but he wondered if they wanted it a straight six months no matter what time. He thought it seemed that it should be a little lower if a first offense and then really sock it to them.

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REPRESENTATIVE KEYSER noted that there was a review process and that is still in the language.

A vote was taken on the amendment and all voted for the adoption with the exception of REPRESENTATIVE DAVE BROWN.

REPRESENTATIVE RAMIREZ stated that he did not know how long under HB 278 you get your licenses suspended or revoked. REPRESENTATIVE ADDY answered that he thought it was 60 days.

REPRESENTATIVE RAMIREZ moved to amend on page 4, line 6 to read "60 days" as he felt it should be the same. REPRESENTATIVE JENSEN seconded the motion.

REPRESENTATIVE RAMIREZ stated that it should be the same on both bills - like 60 days on the first offense and then after that it could be put up to a year for anything after that. REPRESENTATIVE RAMIREZ moved to amend by inserting "60 days the first time and anything after that - one year." REPRESENTATIVE EUDAILY seconded the motion. The motion carried with REPRESENTATIVE ADDY and REPRESENTATIVE KEYSER voting no.

REPRESENTATIVE RAMIREZ moved that HOUSE BILL 808 DO PASS, AS AMENDED. REPRESENTATIVE JENSEN seconded the motion.

REPRESENTATIVE KEYSER moved that they strike out on page 2 "temporary occupational license" and it was agreed that this would be part of the previous motion to amend.

A vote was taken on the motion to DO PASS, AS AMENDED. The motion carried with REPRESENTATIVE DAVE BROWN, REPRESENTATIVE FARRIS and REPRESENTATIVE KENNERLY voting no.

#### HOUSE BILL 278

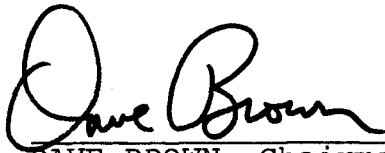
REPRESENTATIVE RAMIREZ moved to reconsider the action they had taken on HOUSE BILL 278. The motion was seconded by REPRESENTATIVE JENSEN. The motion carried unanimously.

REPRESENTATIVE RAMIREZ moved to amend this bill to make it consistent with HB 808. REPRESENTATIVE JENSEN seconded the motion. The motion carried unanimously.

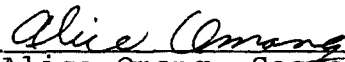
REPRESENTATIVE RAMIREZ moved that HOUSE BILL 278 DO PASS, AS AMENDED. The motion carried with REPRESENTATIVE DAVE BROWN voting no.

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There being no further business, the meeting adjourned at  
3:00 p.m.

A handwritten signature in cursive script, reading "Dave Brown", written over a horizontal line.

DAVE BROWN, Chairman

A handwritten signature in cursive script, reading "Alice Omang", written over a horizontal line.

Alice Omang, Secretary

# STANDING COMMITTEE REPORT

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MR. SPEAKER

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 811

~~First~~ reading copy (White)  
Color

A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE GUARDIANS AND CONSERVATORS FOR WARDS AND PROTECTED PERSONS TO FILE AN ACCOUNTING BY MARCH 31 OF EACH YEAR FOR THE PREVIOUS CALENDAR YEAR AMENDING SECTIONS 72-5-321 AND 72-5-438. MCA."

Respectfully report as follows: That HOUSE Bill No. 811

## BE AMENDED AS FOLLOWS:

1. Title, line 5.  
Following: "AN"  
Insert: "ANNUAL"
2. Title, line 6.  
Strike: "BY" through "YEAR" on line 7.
3. Page 3, line 10.  
Strike: "by March 31 of each year"  
Insert: "annually"
4. Page 3, line 11.  
Strike: "calendar"
5. Page 5, line 3.  
Strike: "by March 31 of each year"  
Insert: "annually"
6. Page 5, line 4.  
Strike: "calendar"

DO PASS

AND AS AMENDED DO PASS

# STANDING COMMITTEE REPORT

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**SPEAKER: '**

MR. ....

## JUDICIARY

We, your committee on .....

having had under consideration ..... **HOUSE** ..... Bill No. **812** .....

~~First~~ reading copy (~~white~~)  
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A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT WHEN IT IS REQUIRED THAT LEGAL NOTICE BE GIVEN TO THE OWNER OF REAL PROPERTY NOTICE MUST ALSO BE GIVEN TO A PURCHASER OF THE PROPERTY UNDER A CONTRACT FOR DEED; AMENDING SECTIONS 7-2-4312, 7-3-1309, 7-3-4431, 7-3-4448, 7-13-2304, 7-14-4109, 7-15-4215, 7-22-2406, 7-22-2446, 15-7-102, 15-7-208, 15-15-101, 15-18-202, 15-23-102, 50-62-103, 69-4-317, 69-4-325, 69-4-353, 70-30-203, 76-3-605, 80-7-114, 80-7-206, 82-2-224, 82-4-222, 82-4-239, 82-10-503, AND 85-15-202, MCA."

Respectfully report as follows: That ..... **HOUSE** ..... Bill No. **812** .....

be amended as follows:

1. Title, line 12.  
Following: "82-10-503,"  
Insert: "85-2-232, 85-2-307,"
2. Page 1, line 19  
Following: "who"  
Insert: ":(a)"
3. Page 1, line 23.  
Following: "purchaser"  
Insert: "; and (b) has recorded the contract or an abstract of the contract in accordance with Title 70, chapter 21"

~~DEPASS~~

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Insert: 4. Page 41, following line 21.

Insert: "Section 28. Section 85-2-232, MCA is amended to read:

"85-2-232. Availability of preliminary decree. (1) The water judge shall send a copy of the preliminary decree to the department, and the water judge shall serve by mail a notice of availability of the preliminary decree to each person who has filed a claim of existing right and to the purchaser under contract for deed, as defined in [section 1], of property in connection with which a claim of existing right has been filed, or, in the Powder River Basin, to each person who has filed a declaration of an existing right. The water judge shall enclose with the notice an abstract of the disposition of such person's claimed or declared existing right. The notice of availability shall also be served upon those issued or having applied for and not having been denied a beneficial water use permit pursuant to Title 85, chapter 2, part 3, those granted a reservation pursuant to 85-2-316, or other interested persons who request service of the notice from the water judge. The clerk or person designated by the water judge to mail the notice shall make a general certificate of mailing certifying that a copy of the notice has been placed in the United States mail, postage prepaid, addressed to each party required to be served notice of the preliminary decree. Such certificate shall be conclusive evidence of due and legal notice of entry of decree.

(2) Any person may obtain a copy of the preliminary decree upon payment of a fee of \$20 or the cost of printing, whichever is greater, to the water judge."

Section 29. Section 85-2-307, MCA is amended to read:

"85-2-307. Notice of application. (1) (a) Upon receipt of a proper application for a permit, the department shall prepare a notice containing the facts pertinent to the application and shall publish the notice in a newspaper of general circulation in the area of the source once a week for 3 consecutive weeks. (b) Before the last date of

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publication, the department shall also serve the notice by first-class mail upon: (i) an appropriator of water or applicant for or holder of a permit who, according to the records of the department, may be affected by the proposed appropriation - ; (ii) any purchaser under contract for deed, as defined in [section 1], of property which, according to the records of the department, may be affected by the proposed appropriation; and A-notice-shall-also-be-served-upon (iii) any public agency that has reserved waters in the source under 85-2-316. (c) The department may, in its discretion, also serve notice upon any state agency or other person the department feels may be interested in or affected by the proposed appropriation. (d) The department shall file in its records proof of service by affidavit of the publisher in the case of notice by publication and by its own affidavit in the case of service by mail.

(2) The notice shall state that by a date set by the department (not less than 30 days or more than 60 days after the last date of publication) persons may file with the department written objections to the application.

(3) The requirements of subsections (1) and (2) of this section do not apply if the department finds, on the basis of information reasonably available to it, that the appropriation as proposed in the application will not adversely affect the rights of other persons." "

Renumber subsequent section.

AND AS AMENDED  
DO PASS

..... Dave Brown,

Chairman.

February 19, 1983

MR. SPEAKERWe, your committee on JUDICIARYhaving had under consideration HOUSE JOINT RESOLUTION Bill No. 23First reading copy ( white )  
Color

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES  
OF THE STATE OF MONTANA URGING THE DEVELOPMENT OF COMMUNITY-BASED  
CORRECTIONS.

Respectfully report as follows: That HOUSE JOINT RESOLUTION Bill No. 23**BE AMENDED AS FOLLOWS:**

1. Page 2, line 1.

Strike: "are" through "institution" on line 2

Insert: "help inmates make the transition from correctional  
programs to the community at the time of their release"

2. Page 2, line 23.

Following: "and"

Strike: "that" through "institution" on line 25.

Insert: "to consider zoning classifications that will permit  
greater latitude in finding locations for prerelease centers"AND AS AMENDEDDO PASS



# STANDING COMMITTEE REPORT

(1 of 5)

February 19, 1983

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 308

First reading copy (white)

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING AN ARRESTING OFFICER TO IMMEDIATELY SUSPEND THE DRIVER'S LICENSE OF A PERSON REFUSING TO SUBMIT TO A CHEMICAL TEST; INCREASING THE PERIOD OF SUSPENSION; REQUIRING THE ISSUANCE OF A TEMPORARY OCCUPATIONAL LICENSE IN CERTAIN INSTANCES; ALLOWING APPEAL OF THE SUSPENSION TO BE FILED IN THE DISTRICT COURT OF THE COUNTY IN WHICH THE ARREST WAS MADE; AMENDING SECTIONS 61-8-402 AND 61-8-403, MCA."

Respectfully report as follows: That HOUSE Bill No. 308

be amended as follows:

1. Title, line 6,  
Following: "INCREASING"  
Insert: ", IN CERTAIN INSTANCES,"

2. Title, line 7.  
Following: "SUSPENSION;"  
Strike: "REQUIRING" through "INSTANCES " on line 8  
Insert: "EXPANDING THE GEOGRAPHICAL APPLICATION OF THE LAWS PROHIBITING DRIVING UNDER THE INFLUENCE OF ALCOHOL "

3. Title, following line 10.  
Strike: "61-8-402 AND 61-8-403"  
Insert: "61-8-101 AND 61-8-401 THROUGH 61-8-404"

OFF PASS

4. Page 1, following enacting clause.

Insert: "Section 1. Section 61-8-101, MCA is amended to read:

"61-8-101. Application -- exceptions. (1) As used in this chapter, "ways of the state open to the public" means any highway, road, alley, lane, parking area, or other public or private place adapted and fitted for public travel that is in common use by the public with the express or implied consent of the owner. ~~41~~ (2) The provisions of this chapter relating to the operation of vehicles refer exclusively to the operation of vehicles upon highways except:

(a) where a different place is specifically referred to in a given section;

(b) the provisions of 61-8-301 and 61-8-401, with regard to operating a vehicle while under the influence of drugs, shall apply upon highways ~~and elsewhere throughout the~~ ways of the state open to the public.

(2) The operation of motor vehicles directly across the public roads and highways of this state, especially as required in the transportation of natural resource products, including agricultural products and livestock, shall not be considered to be the operation of such vehicles on the public roads and highways of this state provided that such crossings are adequately marked with warning signs or devices. Such crossings are subject to provisions relating to stopping before entry and to restoration of any damage as may reasonably be prescribed by the state or local agency in control of safety of operation of the public highway involved."

Section 2. Section 61-8-401 is amended to read:

"61-8-401. Persons under the influence of alcohol or drugs. (1) It is unlawful and punishable as provided in ~~61-8-714~~ 61-8-714 for any person who is under the influence of:

(a) alcohol to drive or be in actual physical control of a motor vehicle upon the highways ways of this the state open to the public;

(b) a narcotic drug to drive or be in actual physical control of a motor vehicle within this state; or

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(c) any other drug to a degree which renders him incapable of safely driving a motor vehicle to drive or be in actual physical control of a motor vehicle within this state.

(2) The fact that any person charged with a violation of subsection (1) is or has been entitled to use such a drug under the laws of this state does not constitute a defense against any charge of violating subsection (1).

(3) In any criminal prosecution for a violation of subsection (1) of this section relating to driving a vehicle while under the influence of alcohol, the amount of alcohol in the defendant's blood at the time alleged, as shown by chemical analysis of the defendant's blood, urine, breath, or other bodily substance, shall give rise to the following presumptions:

(a) If there was at that time 0.05% or less by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was not under the influence of alcohol.

(b) If there was at that time in excess of 0.05% but less than 0.10% by weight of alcohol in the defendant's blood, that fact shall not give rise to any presumption that the defendant was or was not under the influence of alcohol but such fact may be considered with other competent evidence in determining the guilt or innocence of the defendant.

(c) If there was at that time 0.10% or more by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was under the influence of alcohol.

(4) Percent by weight of alcohol in the blood shall be based upon grams of alcohol per 100 cubic centimeters of blood.

(5) Each municipality in this state is given authority to enact 61-2-714 and subsections (1) through (4) of this section with the word "state" in subsection (1) of this section changed to read "municipality", as an ordinance and is given jurisdiction of the enforcement of the ordinance and of the imposition of the fines and penalties therein provided."

Renumber subsequent sections.

5. Page 1, line 16.

Following: "the"

Strike: "public highways of this"

Insert: "ways of the"

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6. Page 1, line 17.

Following: "state"

Insert: "open to the public"

7. Page 2, line 1.

Following: "the"

Strike: "public highways of this"

Insert: "ways of the"

8. Page 2, line 2.

Following: "state"

Insert: "open to the public"

9. Page 2, line 23.

Following: "of"

Strike: "6" through "(7)" on page 3, line 1.

Insert: "60 days or 1 year as provided in subsection (7)"

10. Page 3, line 22.

Following: "the"

Strike: "public highways of this"

Insert: "ways of the"

11. Page 3, line 23.

Following: "state"

Insert: "open to the public"

12. Page 4, line 5.

Following: "license"

Strike: "seized" through "review" on line 20.

Insert: "suspension under this section must be for the following  
time periods: (a) If the person's driving record shows no prior  
refusals to submit to a chemical test pursuant to this section

his license  
must be suspended for 60 days. (b) If the person's driving record  
shows a prior refusal to submit to a chemical test pursuant to  
this section

his license must be suspended for 1 year "

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13. Page 5, following line 25.

Insert: "Section 5. Section 61-8-404, MCA is amended to read:

"61-8-404. Evidence admissible. (1) Upon the trial of any criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a motor vehicle while under the influence of alcohol, evidence of the amount of alcohol in the person's blood at the time of the act alleged as shown by a chemical analysis of his blood, breath, or urine is admissible.

(2) If the person under arrest refused to submit to the test as hereinabove provided, proof of refusal shall be admissible in any criminal action or proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical control of a motor vehicle upon the public--highways ways of the state open to the public while under the influence of alcohol.

(3) The provisions of this part do not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of alcohol."

AND AS AMENDED  
DO PASS

# STANDING COMMITTEE REPORT

Page 1 of 5

February 21, 1983

MR. ~~SPEAKER~~.....

We, your committee on **JUDICIARY**.....

having had under consideration **HOUSE**..... Bill No. **278**

~~First~~ reading copy (~~white~~)  
Color

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROHIBIT THE ISSUANCE  
OF A RESTRICTED PROBATIONARY DRIVER'S LICENSE TO ANY PERSON  
WHOSE LICENSE HAS BEEN SUSPENDED FOR CONVICTION OF DRIVING UNDER  
THE INFLUENCE OF ALCOHOL OR DRUGS; AMENDING SECTIONS 61-2-302  
AND 61-11-101, MCA."

Respectfully report as follows: That..... **HOUSE**..... Bill No. **278**

be amended as follows:

1. Title, line 7.

Following: "DRUGS;"

Insert: "INCREASING, IN CERTAIN INSTANCES, THE PERIOD OF  
SUSPENSION OF THE DRIVER'S LICENSE OF A PERSON REFUSING TO  
SUBMIT TO A CHEMICAL TEST; EXPANDING THE GEOGRAPHICAL  
APPLICATION OF THE LAWS PROHIBITING DRIVING UNDER THE INFLUENCE  
OF ALCOHOL;"

2. Title, line 8.

Following: "61-2-302"

Insert: ", 61-8-101, 61-8-401 THROUGH 61-8-404"

3. Page 3, line 16.

Following: "convicted"

Insert: "two or more times"

DEPT. OF  
TRANSPORTATION

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4. Page 3, line 19.

Following: "from"

Strike: "his"

Insert: "the second or subsequent"

5. Page 3, following line 21.

Insert: "Section 2. Section 61-8-101, MCA is amended to read:

"61-8-101. Application -- exceptions. (1) As used in this chapter, "ways of the state open to the public" means any highway, road, alley, lane, parking area, or other public or private place adapted and fitted for public travel that is in common use by the public with the express or implied consent of the owner. ~~{1}~~ (2) The provisions of this chapter relating to the operation of vehicles refer exclusively to the operation of vehicles upon highways except:

(a) where a different place is specifically referred to in a given section;

(b) the provisions of 61-8-301 and 61-8-401, with regard to operating a vehicle while under the influence of drugs, shall apply upon highways ~~and elsewhere throughout the ways of the state open to the public.~~

(2) The operation of motor vehicles directly across the public roads and highways of this state, especially as required in the transportation of natural resource products, including agricultural products and livestock, shall not be considered to be the operation of such vehicles on the public roads and highways of this state provided that such crossings are adequately marked with warning signs or devices. Such crossings are subject to provisions relating to stopping before entry and to restoration of any damage as may reasonably be prescribed by the state or local agency in control of safety of operation of the public highway involved."

Section 3. Section 61-8-401 is amended to read:

"61-8-401. Persons under the influence of alcohol or drugs. (1) It is unlawful and punishable as provided in 61-8-714~~{1}~~ 61-8-714 for any person who is under the influence of:

(a) alcohol to drive or be in actual physical control of a motor vehicle upon the highways ways of this the state open to the public;

(b) a narcotic drug to drive or be in actual physical control of a motor vehicle within this state; or

(c) any other drug to a degree which renders him incapable of safely driving a motor vehicle to drive or be in actual physical control of a motor vehicle within this state.

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(2) The fact that any person charged with a violation of subsection (1) is or has been entitled to use such a drug under the laws of this state does not constitute a defense against any charge of violating subsection (1).

(3) In any criminal prosecution for a violation of subsection (1) of this section relating to driving a vehicle while under the influence of alcohol, the amount of alcohol in the defendant's blood at the time alleged, as shown by chemical analysis of the defendant's blood, urine, breath, or other bodily substance, shall give rise to the following presumptions:

(a) If there was at that time 0.05% or less by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was not under the influence of alcohol.

(b) If there was at that time in excess of 0.05% but less than 0.10% by weight of alcohol in the defendant's blood, that fact shall not give rise to any presumption that the defendant was or was not under the influence of alcohol but such fact may be considered with other competent evidence in determining the guilt or innocence of the defendant.

(c) If there was at that time 0.10% or more by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was under the influence of alcohol.

(4) Percent by weight of alcohol in the blood shall be based upon grams of alcohol per 100 cubic centimeters of blood.

(5) Each municipality in this state is given authority to enact 61-8-714 and subsections (1) through (4) of this section with the word "state" in subsection (1) of this section changed to read "municipality", as an ordinance and is given jurisdiction of the enforcement of the ordinance and of the imposition of the fines and penalties therein provided."

Section 4. Section 61-8-402, MCA is amended to read:

"61-8-402. Chemical blood, breath, or urine tests. (1) Any person who operates a motor vehicle upon the public highways ways of this the state open to the public shall be deemed to have given consent, subject to the provisions of 61-8-401, to a chemical test of his blood, breath, or urine for the purpose of determining the alcoholic content of his blood if arrested by a peace officer for driving or in actual physical control of a motor vehicle while under the influence of alcohol. The test shall be administered at the direction of a peace officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle upon the public-highways ways of this the state open to the



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public, while under the influence of alcohol. The arresting officer may designate which one of the aforesaid tests shall be administered.

(2) Any person who is unconscious or who is otherwise in a condition rendering him incapable of refusal shall be deemed not to have withdrawn the consent provided by subsection (1) of this section.

(3) If a person under arrest refuses upon the request of a peace officer to submit to a chemical test designated by the arresting officer as provided in subsection (1) of this section, none shall be given, but the division, upon the receipt of a sworn report of the peace officer that he had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle upon the public-highways ways of this the state open to the public, while under the influence of alcohol and that the person had refused to submit to the test upon the request of the peace officer, shall suspend the license or driving privilege of such person on the highways of this state ~~for a period of 60 days~~ in accordance with subsection (4).

(4) Suspension under this section must be for the following time periods: (a) If the person's driving record shows no prior refusals to submit to a chemical test pursuant to this section, his license must be suspended for 60 days. (b) If the person's driving record shows a prior refusal to submit to a chemical test pursuant to this section, his license must be suspended for one year. Like refusal by a nonresident shall be subject to suspension by the division in like manner. All such suspensions are subject to review as hereinafter provided."

Section 5. Section 61-8-403, MCA is amended to read:

"61-8-403. Right of appeal to court. The division shall immediately notify any person whose license or privilege to drive has been suspended, as hereinbefore authorized, in writing and such person shall have the right to file a petition within 30 days thereafter for a hearing in the matter in the district court in the county wherein such person shall reside. Such court is hereby vested with jurisdiction and it shall be its duty to set the matter for hearing upon 30 days' written notice to the county attorney of the county wherein the appeal is filed and such county attorney shall represent the state, and thereupon the court shall take testimony and examine into the facts of the case, except that the issues shall be limited to whether a peace officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle upon the public-highways ways of the state open to the public, while under the influence of alcohol, whether the

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person was placed under arrest, and whether such person refused to submit to the test. The court shall thereupon determine whether the petitioner is entitled to a license or is subject to suspension as heretofore provided."

Section 6. Section 61-8-404, MCA is amended to read:

"61-8-404. Evidence admissible. (1) Upon the trial of any criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a motor vehicle while under the influence of alcohol, evidence of the amount of alcohol in the person's blood at the time of the act alleged as shown by a chemical analysis of his blood, breath, or urine is admissible.

(2) If the person under arrest refused to submit to the test as hereinabove provided, proof of refusal shall be admissible in any criminal action or proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical control of a motor vehicle upon the public--highways ways of the state open to the public while under the influence of alcohol.

(3) The provisions of this part do not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of alcohol."

Renumber subsequent sections.

AND AS AMENDED  
DO PASS

.....  
DAVE BROWN,

.....  
Chairman.

	Date: 2/19 No: HB 831 To Table	Date: 2/19 No: HB 828 To Table	Date: 2/19 No: HB 768 To Table	Date: 2/19 No: HB 845 To Table	Date No:	Date: No:
BROWN, Dave	no	yes	yes	yes		
ADDY, Kelly	yes	yes	yes	no		
BERGENE, Toni	no	no	no	no		
BROWN, Jan	yes	yes	yes	no		
CURTISS, Aubyn	yes	no	no	yes		
DAILY, Fritz	yes	yes	yes	—		
DARKO, Paula	no	yes	no	no		
EUDAILY, Ralph	yes	no	no	yes		
FARRIS, Carol	no	yes	yes	no		
HANNAH, Tom	yes	no	yes	yes		
IVERSON, Dennis	yes	yes	no	yes		
JENSEN, James	yes	yes	yes	yes		
KENNERLY, Roland	yes	yes	no	yes		
KEYSER, Kerry	no	no	no	no		
RAMIREZ, Jack	yes	no	yes	yes		
SCHYE, Ted	no	yes	yes	no		
SEIFERT, Carl	—	—	—	—		
SPAETH, Gary	yes	no	yes	yes		
VELEBER, Dennis	yes	yes	yes	yes		
	12-yes 6-no	11-yes 7-no	11-yes 7-no	10-yes 7-no		

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House Bill # 831

Exhibit A  
HB 831  
2/19/83

In previous hearing on HB 238 purposes & necessity of a Lien Law were covered

Like all laws, problems are created because the public is not aware.

The problem that exist is "How to inform consumer of the Lien Law, What it entails, his rights, what could happen if materialmen or subcontractors are not paid.

I feel HB831 will cause the consumer to be informed. The contractor is the one that has a one on one contact with the consumer. Through their negotiations and through the contract or letter he would be made aware of the Lien Law.

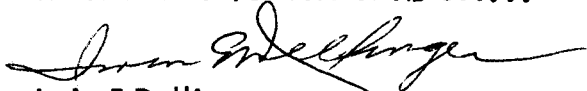
With this law the owner would be given early warning about the lien law in the form of the notice which must be given at the time of signing the contract. This should alert the owner to the existence of the law and to the probability that he will receive notices in the future and may eventually be subject to lien claims.

If we have this law HB 831, you will find more materialmen and subcontractors notifying the consumer that they are delivering material or labor for this given project. As it is there is a stigma about notices reserving lien rights if not paid for materials. The contractors get mad the consumers wonders if they are dealing with a unscrupulous person. If the Contractor by law is required to notify the consumer everyone would be treated the same. GIVE US THIS LAW and you will find that more notices will be sent to consumer to make him aware.

Wisconsin has a law where the contractor is required to have in his contract or given in a letter within 10 days the notice of lien laws. Since enactment of this law the filings of liens has dropped over 75%. Those liens filed cause less problems to solve.

WE WANT THE CONSUMER ALERTED: Give us HB 831 and I feel we will have a good start on eliminating some of the existing problem...

We solicit a Yes vote of HB 831...



Irvin E Dellinger

Exec. Secretary

Montana Building Material Dealers Association

CONSTRUCTION LIEN NOTICE

AS REQUIRED BY THE MONTANA CONSTRUCTION LIEN LAW,  
BUILDER HEREBY NOTIFIES OWNER THAT PERSONS OR COMPANIES  
FURNISHING LABOR OR MATERIALS FOR THE CONSTRUCTION ON  
OWNER'S LAND MAY HAVE LIEN RIGHTS ON THAT LAND AND ON  
THE BUILDINGS ON THAT LAND IF THEY ARE NOT PAID FOR SUCH  
MATERIALS. THOSE ENTITLED TO LIEN RIGHTS, IN ADDITION TO  
THE UNDERSIGNED BUILDER, ARE THOSE WHO CONTRACT DIRECTLY  
WITH THE OWNER FOR LABOR OR MATERIALS FOR THE CONSTRUCTION.  
BUILDER AGREES TO COOPERATE WITH THE OWNER AND HIS LENDER,  
IF ANY, TO SEE THAT ALL POTENTIAL LIEN CLAIMANTS ARE DULY PAID.

Date of this Notice:

\_\_\_\_\_, 19 \_\_\_\_

SIGNED:

\_\_\_\_\_  
Builder  
(give firm name & title of signer)

Exhibit B  
HB 812  
2/19/83

Proposed Amendments to HB 812

1. Title, line 12.  
Following: "82-10-503,"  
Insert: "85-2-232, 85-2-307,"
2. Page 1, line 19  
Following: "who"  
Insert: ": (a) "
3. Page 1, line 23.  
Following: "purchaser"  
Insert: "; and (b) has recorded the contract or an abstract of the contract in accordance with Title 70, chapter 21"
4. Page 41, following line 21.  
Section 28. Section 85-2-232, MCA is amended to read:

"85-2-232. Availability of preliminary decree. (1) The water judge shall send a copy of the preliminary decree to the department, and the water judge shall serve by mail a notice of availability of the preliminary decree to each person who has filed a claim of existing right and to the purchaser under contract for deed, as defined in [section 1], of property in connection with which a claim of existing right has been filed, or, in the Powder River Basin, to each person who has filed a declaration of an existing right. The water judge shall enclose with the notice an abstract of the disposition of such person's claimed or declared existing right. The notice of availability shall also be served upon those issued or having applied for and not having been denied a beneficial water use permit pursuant to Title 85, chapter 2, part 3, those granted a reservation pursuant to 85-2-316, or other interested persons who request service of the notice from the water judge. The clerk or person designated by the water judge to mail the notice shall make a general certificate of mailing certifying that a copy of the notice has been placed in the United States mail, postage prepaid, addressed to each party required to be served notice of the preliminary decree. Such certificate shall be conclusive evidence of due and legal notice of entry of decree.

(2) Any person may obtain a copy of the preliminary decree upon payment of a fee of \$20 or the cost of printing, whichever is greater, to the water judge."

Section 29. Section 85-2-307, MCA is amended to read:

"85-2-307. Notice of application. (1) (a) Upon receipt of a proper application for a permit, the department shall prepare a notice containing the facts pertinent to the application and shall publish the notice in a newspaper of general circulation in the area of the source once a week for 3 consecutive weeks. (b) Before the last date of

publication, the department shall also serve the notice by first-class mail upon: (i) an appropriator of water or applicant for or holder of a permit who, according to the records of the department, may be affected by the proposed appropriation -       ; (ii) any purchaser under contract for deed, as defined in [section 1], of property which, according to the records of the department, may be affected by the proposed appropriation; and ~~A-notice-shall-also-be-served-upon~~ (iii) any public agency that has reserved waters in the source under 85-2-316. (c) The department may, in its discretion, also serve notice upon any state agency or other person the department feels may be interested in or affected by the proposed appropriation. (d) The department shall file in its records proof of service by affidavit of the publisher in the case of notice by publication and by its own affidavit in the case of service by mail.

(2) The notice shall state that by a date set by the department (not less than 30 days or more than 60 days after the last date of publication) persons may file with the department written objections to the application.

(3) The requirements of subsections (1) and (2) of this section do not apply if the department finds, on the basis of information reasonably available to it, that the appropriation as proposed in the application will not adversely affect the rights of other persons."

Renumber subsequent section.

Exhibit C  
HB 768  
2/19/83

Proposed Amendments to HB 768

1. Page 1, following line 14.

Insert: "(2) A surveyor seeking entry under the provisions of this section shall: (a) notify the record landowner by certified mail of the intention of the surveyor or his assistants to enter the landowner's property, and (b) identify the section marker needed to complete the survey.

Renumber subsequent subsections.

2. Page 2, line 6.

Following: "section,"

Insert: "or if more than 14 days have elapsed since the surveyor has given the notice required by subsection (2),"

3. Page 2, line 9.

Following: "entry"

Strike: "In" through "injunction" on line 12.