

MINUTES OF THE JUDICIARY COMMITTEE
March 2, 1983

The meeting of the House Judiciary Committee was called to order by Chairman Dave Brown at 9:01 a.m. in room 224A of the capitol buiilding, Helena, Montana. All members were present with the exception of Representative Eudaily, who was excused, and Representative Hannah and Representative Seifert. Brenda Desmond, Staff Attorney for the Legislative Council, was also present.

HOUSE BILL 123

SENATOR MARBUT stated that this was a relatively simple bill and it was an act to raise the dollar amount of the bond that notaries public must have from \$1,000.00 to \$5,000.00. He testified that this bill will bring this in line with other states and that Montana is well under the average and that \$5,000.00 is about the average. He said that this is a protective measure for the general public because \$1,000.00 is not a suitable amount for those people who wish to make a claim against a notary public for inappropriate action. He further advised that the premium to the notary who makes an application will not increase as this is a minimum premium. He also explained that the bill will change the word "shall" to the word "may" to make it clear that the governor's authority to appoint notaries' public is discretionary.

CLIFF CHRISTIAN, from the Secretary of State's office, explained that this bill came from a meeting of the national Secretaries' of State regarding bond limits throughout the country. He presented a copy of a letter from the National Notary Association for the committee to review. See EXHIBIT A. He also passed out for the committee to examine a copy of a letter from the Western Surety Company, which assured that their premium would not be raised any further. See EXHIBIT B. He stated that he was informed by the president of the Western Surety Company that if they had a bond of \$5.00, their premium would be \$30.00 per year; and the maximum, up to \$5,000.00, would be \$30.00.

There were no further proponents and no opponents.

SENATOR MARBUT closed.

REPRESENTATIVE ADDY queried when he would have to get a new bond for his notary. SENATOR MARBUT replied that when it comes due - that this does not negate the current bonds.

REPRESENTATIVE ADDY asked how many cases have been filed against notaries. SENATOR MARBUT answered that to his knowledge, none.

REPRESENTATIVE ADDY wondered why does the claimant need an attorney, if the notaries have a bond. SENATOR MARBUT answered that he thinks the reason they might need an attorney is because the notary would not wish to succumb to a fraudulent claim relating to his negligence.

REPRESENTATIVE SPAETH said that he was a little distressed that if we pass this bill, there will be more litigation and more recovery and he was curious as to why they would want to do that. SENATOR MARBUT replied that this may in fact happen, but he felt that it would be a fraudulent action that would generate the increase and he did not think that people would go overboard just to recover \$5,000.00.

REPRESENTATIVE SPAETH questioned if they know of abuses out there right now with notaries. MR. CHRISTIAN replied that there are abuses - primarily in notarizing signatures that are attached to a document.

SENATOR MARBUT expanded saying that he thought it was quite important for Montana to be fairly similar with other states and he stated that most of his business that ends up with notary activity is interstate. He said that we are dealing with other states and their laws; and he felt to be more uniform, this bill would be appropriate.

REPRESENTATIVE KEYSER questioned who now handled the violations. MR. CHRISTIAN responded that the county attorneys would take any action or a private attorney against the bond.

REPRESENTATIVE KEYSER wondered how this is going to change just by raising this from \$1,000.00 to \$5,000.00. MR. CHRISTIAN responded that they do not know what that change is going to be - that they are just attempting to allow someone to have access to an attorney for justifiable damages.

REPRESENTATIVE KEYSER asked what was the reason the "shall" was changed to "may". MR. CHRISTIAN replied that the power to issue certificates to the notaries public is vested in the governors' office and they wished this to conform to the other statute.

CHAIRMAN DAVE BROWN requested that SENATOR MARBUT find a representative whom he would like to carry this bill on the House floor.

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March 2, 1983
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There were no further questions and the hearing on this bill closed.

HOUSE BILL 220

SENATOR DANIELS stated that this was an act allowing the warden of the Montana State Prison to restore good time with the approval of the department.

CURT CHISHOLM, Deputy Director of the Department of Institutions, stated that the department requested this bill. He explained that, on occasion, they will forfeit good time for an inmate for disciplinary reasons but that they do not have any statutory authority to restore the good time once it has been forfeited. He informed the committee that this rule was challenged in 1965 by an inmate who had lost good time because of a parole violation; the warden actually published rules, implying that he had the authority to restore good time when he felt it was appropriate; this was commented on by an attorney general's opinion that the state of Montana did not have any authority to restore good time; and subsequently the supreme court did rule that the state did not have this authority. He said that if they get this authority, they intend to use it very sparingly, very conservatively and very discreetly and only in instances where they need it. He asked the committee to concur in this legislation.

SENATOR DANIELS closed.

REPRESENTATIVE JENSEN questioned if it normally takes the prison administration 17 years to correct such an obvious problem. MR. CHISHOLM replied that this has been suggested numerous times recently due to changes in the good-time law just last session and they have been forfeiting more good time just recently.

There were no further questions and the hearing on this bill was closed.

CHAIRMAN BROWN requested that SENATOR DANIELS find a representative whom he would like to carry this bill on the House floor.

SENATE BILL 142

SENATOR GAGE stated that this bill will remove the requirement that released federal tax liens not be removed from the files of the Secretary of State. He explained that at the

Judiciary Committee
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Page Four

present time that they keep indefinitely files on federal tax liens and this bill would allow them to dispose of those files after the federal tax liens have been satisfied. He advised the committee that they presently have all the information on a card file and they plan to keep this indefinitely.

CLIFF CHRISTIAN from the Secretary of State's office, indicated that they have federal tax lien files that are 10 to 15 years old; it is simply becoming a storage problem and he stated that they were informed by the Internal Revenue Service that they would support this concept.

There were no further proponents and no opponents.

SENATOR GAGE closed.

There were no questions.

CHAIRMAN BROWN requested that SENATOR GAGE find a representative that he would like to carry this bill on the House floor.

EXECUTIVE SESSION

SENATE BILL 142

REPRESENTATIVE RAMIREZ requested that action on this bill be delayed for a day as they had passed HB 731, which adopts the 1978 revisions to the Uniform Federal Lien Registration Law and this bill deals with the same subject.

MS. DESMOND informed the committee that she had compared these two bills and she could find no apparent conflict, but she called Alan Robertson at the Secretary of State's office and he was not in and would return her call.

REPRESENTATIVE RAMIREZ suggested that they pass it for the day until she receives this information.

SENATE BILL 220

REPRESENTATIVE DAILY moved that this bill DO PASS. REPRESENTATIVE ADDY seconded the motion. The motion carried unanimously.

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SENATE BILL 123

REPRESENTATIVE SPAETH moved that this bill DO PASS. REPRESENTATIVE JENSEN seconded the motion.

REPRESENTATIVE ADDY thought that if it was \$4.00 a \$1,000.00 for insurance and the notaries are paying \$30.00 anyway, why not make it \$7,500.00 maximum for a minimum premium charge.

REPRESENTATIVE SPAETH felt that \$5,000.00 is sufficient; if they want more than this, they can get more; and they should not open a Pandora's box. He felt it was important to bring this in line with surrounding states.

REPRESENTATIVE SCHYE noted that in North Dakota it is only \$500.00, in Wyoming it is \$500.00, in South Dakota it is \$500.00 and in Utah it is \$500.00.

REPRESENTATIVE RAMIREZ contended that this is something that is for the protection of the public and does not cost any more and he wondered why not give the public additional protection when it does not cost a dime.

REPRESENTATIVE SCHYE said that he felt the same way, but if it cost the notaries any additional money he would be against it.

CHAIRMAN BROWN asked if Western Surety Company is the only company that offers this insurance and REPRESENTATIVE KEYSER replied that they furnish 80 per cent of the insurance.

CHAIRMAN BROWN questioned if they were sure that the other insurance companies would not raise their premiums. MR. CHRISTIAN responded that they could raise their rates, but they would have less business. He also informed the committee that one thing that he failed to mention-at this meeting of the Secretaries of State, they all agreed to go for a \$5,000.00 minimum.

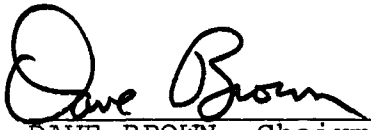
REPRESENTATIVE FARRIS questioned if they had said that there had never been any claims against notaries public and she

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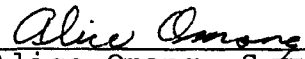
thought that this was strange to have a bill before the committee where there has been no problem.

A vote was taken and the motion carried with REPRESENTATIVE FARRIS, REPRESENTATIVE DAILY and REPRESENTATIVE DAVE BROWN voting no.

REPRESENTATIVE KEYSER moved that the meeting adjourn. The meeting adjourned at 9:30 a.m.



DAVE BROWN, Chairman



Alice Omang, ~~Sec~~retary

STANDING COMMITTEE REPORT

.....March 2..... 19...83...

MR. **SPEAKER:**

We, your committee on **JUDICIARY**

having had under consideration **SENATE** Bill No. **220**

_____ reading copy (_____)
color

**A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING THE WARDEN OF
THE MONTANA STATE PRISON TO RESTORE GOOD TIME WITH THE APPROVAL
OF THE DEPARTMENT: AMENDING SECTION 53-30-105, MCA."**

Respectfully report as follows: That..... **SENATE** Bill No. **220**

~~DO PASS~~

BE CONCURRED IN

120-98
62

.....March 2,..... 19 83.....

MR. **SPEAKER:**.....

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

having had under consideration.....**SENATE**..... Bill No. **123**.....

third reading copy (blue)
color

**A BILL FOR AN ACT ENTITLED: "AN ACT TO RAISE THE DOLLAR
AMOUNT OF THE BOND THAT NOTARIES PUBLIC MUST GIVE; AND TO
MAKE IT CLEAR THAT THE GOVERNOR'S AUTHORITY TO ISSUE A
COMMISSION IS DISCRETIONARY; AMENDING SECTION 1-5-405, MCA."**

Respectfully report as follows: That.....**SENATE**..... Bill No. **123**.....

~~XXXXXX~~

BE CONCURRED IN

STATE PUB. CO.
Helena, Mont.

.....
DAVE BROWN,

Chairman.

COMMITTEE SECRETARY

VISITOR'S REGISTER

HOUSE JUDICIARY COMMITTEE

~~BILL SENATE BILL 123~~

DATE March 2, 1983

SPONSOR Marbut

[illegible]

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

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.



Exhibit A
SB 123
3/2/83

NATIONAL NOTARY ASSOCIATION

MILTON G. VALERA
RESIDENT

DEBORAH M. THAW
EXECUTIVE DIRECTOR

23012 VENTURA BOULEVARD
WOODLAND HILLS, CALIFORNIA 91364-1186 USA
TELEPHONE (213) 347-2035, CABLE: NOTARIAN

FOUNDER
RAYMOND C. ROTHMAN
1922-

December 30, 1982

Mr. Cliff Christian
Bureau Chief, Governmental Affairs
Office of the Secretary of State
Capitol Station
Helena, MT 59620

Dear Mr. Christian:

Thank you for your recent inquiry about the position of the National Notary Association regarding Notary bonds.

The higher bond amount of \$5,000 that has been proposed in Montana will provide consumers with much greater protection against negligence or purposeful misconduct by Notaries than the present \$1,000 bond.

Some Notaries participate in fraudulent transactions through lack of knowledge or attention to detail or as willful co-conspirators. They will notarize a forged document without bothering to check the signer's identification documents or even requiring the document signer to appear before the Notary.

The reckless or criminal Notary may escape liability if a Notary bond is nonexistent or not large enough to prompt an action to recover damages by the party injured in a document fraud. A larger bond will encourage actions against the bond. In turn, the surety will look to the Notary for recovery of the bond amount, thus forcing the Notary to take financial responsibility for his actions.

Admittedly, a \$5,000 bond might not fully reimburse a victimized member of the public who has been financially damaged by the actions of a Notary. Yet, to a person who may have lost a life's savings, \$5,000 is far better than nothing at all. Furthermore, many attorneys would not be prompted to help a victim recover against a \$1,000 bond. A \$5,000 bond, however, would be more attractive and might lead to the victim's recovery of a much larger amount.

Please let me know if you would like any further information about notarial practices.

Sincerely,

Milton G. Valera
President

MGV:ss
020222

Celebrating Our 25th Anniversary

Exhibit B
SB 123
3/2/83



Here ya go! Chff
Western Surety Company

Office of General Counsel

January 19, 1983

EXPRESS MAIL

Mr. Bob McCue
Secretary of State's Office
State of Montana
Helena, MT 59620

Dear Mr. McCue:

Re: Notary Bonds - Montana

Pursuant to our telephone conversation of yesterday, I am enclosing virtually all of the documentation that we can dig up which would show that our current Montana Notary Public Bond premium structure is not unique to that State but in fact, is the policy of Western Surety Company throughout the Nation. As you can see from the September 2, 1982, letter, The Surety Association also uses the term minimum premium of \$30. With the standard premium of \$4 per \$1,000 of penalty, the \$5,000 will stay at the \$30 premium charge.

I think the statement could be made that the entire insurance industry has used these rates. If anyone goes higher, then they are above the market and there would be no reason to do business with them.

Let me know if you have any further questions or documentation concerning this legislation. Thanks, Mr. McCue, for your efforts.

Yours very truly,

Steve Kirby
STEVE KIRBY

SK:klo
Encl.

P.S. Also Bob, these rates have literally been in effect (except minimum premium) for decades.

NOTARY BOND S

	<u>Penalty</u>	<u>Premium</u>	<u>Term</u>
AL	\$ 2,000	\$ 30	4 years
AK	1,000	30	4 years
AZ	1,000	30	4 years
AR	4,000	40	8 years
CA	10,000	40	4 years
CO	5,000	30	4 years
DC	2,000	30	4 years
FL	1,000	15	4 years
ID	1,000	30	4 years
IL	1,000	20	4 years
IN	1,000	20	4 years
IA	500	30	3 years
KS	1,000	20	4 years
	2,500	30	4 years
KY	500	30	4 years
LA	10,000	\$25 per yr. - \$110 for	5 years
MI	1,000	15	4 years
MN	2,000	30	7 years
MS	3,500/5,000	30	4 years
MO	10,000	30	4 years
MT	1,000	30	3 years
NE	4,000	30	4 years
NV	2,000	30	4 years
NM	500	30	4 years
ND	500	30	6 years
OK	1,000	20	4 years

	<u>Penalty</u>	<u>Premium</u>	<u>Term</u>
OR	\$ 500	\$ 30	4 years
PA	3,000	20	4 years
SD	500	30	8 years
TN	5,000	30	4 years
TX	2,500	40	4 years
UT	500	30	4 years
VA	500	30	4 years
WA	10,000	40	4 years
WV	500	20	10 years
	1,000	30	10 years
WI	500	10	4 years
WY	500	10	4 years

The Surety Association of America

100 WOOD AVE. S., ISELIN, NEW JERSEY 08830 (201) 494-7600

LLOYD PROVOST
General Manager

September 2, 1982

Surety Department
QUENTIN W. LERCH
Secretary

Fidelity Department
FRANCIS X. LeMUNYON
Secretary

ROBIN V. WELOY
Assistant Secretary-Attorney

Actuarial Department
ROBERT G. HEPBURN, JR.
Assistant Secretary

GAETON SACCOCCIO
Statistician

Membership Services
ALICE TIERNEY
Assistant Secretary

STATE OF PENNSYLVANIA

SURETY OTHER THAN CONTRACT BONDS

1. ANNUAL MINIMUM PREMIUM, ANNUAL EARNED MINIMUM PREMIUM AND TERM MINIMUM PREMIUM.
2. PUBLIC OFFICIAL - TAX COLLECTORS OR TREASURER - COLLECTORS
3. CUSTOMS - RATES AND MINIMUM

TO THE COMPANY ADDRESSED:

Effective September 15, 1982

1. As to all new bonds listed below and upon the next premium anniversary date of existing bonds (except those which cannot be terminated by the surety), the Annual Minimum Premium, Annual Earned Minimum Premium and Term Minimum Premium is \$30.00.

This new minimum is applicable to the following classes of bonds and any provision in the manual which conflicts with it is hereby amended:

- a. Court Bonds - Judicial Proceedings.
 - b. Court Bonds - Fiduciaries.
 - c. License and Permit Bonds.
 - d. Miscellaneous Bonds.
 - e. U. S. Government - Immigrant Bonds.
 - f. U. S. Government - Excise Bonds.
 - g. U. S. Government - Official Bonds.
 - i. Public Official - Individual and Schedule Bonds.
2. Pennsylvania Public Official Page 123a. Tax Collectors or Treasurer Collectors is revised as follows:

*Annual Premium:

For annual Tax Duplicate (Meaning the aggregate duplicates for the preceding tax year or the current year, if available) up to and including \$1,000,000 the following scale of rates applies:



Where Bond Penalty is 10% or less of the Tax Duplicate -- \$.60 per M on the duplicate.

Where Bond Penalty is over 10% of the Tax Duplicate and not over 33 1/3% -- \$.90 per M on the Duplicate.

Where Bond Penalty is over 33 1/3% of the Tax Duplicate -- and not over 50% -- \$1.05 per M on the Duplicate.

Where Bond Penalty is over 50% of the Tax Duplicate and not over 75% -- \$1.12 per M on the Duplicate.

Where Bond Penalty is over 75% of the Tax Duplicate and not over 100% -- \$1.30 per M on the Duplicate.

For annual Tax Duplicate over \$1,000,000:

For first \$1,000,000 - apply above rates.

For portion of Duplicate between \$1,000,000 and \$2,000,000 \$.45 per M.

For balance of Duplicate over \$2,000,000 \$.30 per M.

ANNUAL MINIMUM PREMIUM \$30.00

- a. Whereas the same tax official gives two or more bonds covering his various tax duplicates, compute premium on the sum total of all his bonds as though a single bond were given and apportion the premium between the various bonds in the proportion that each separate duplicate bears to the total.
 - b. For counties using "joint purchase" of Tax Collector bonds, the above rates shall be used with the premium based on the total amount of the Tax Duplicates.
3. The Customs Rate and Minimum Revision of March 1, 1982, manual pages U.S.-43 through 51 inclusive, has now been cleared for use in Pennsylvania.

DENNIS WINE

DW/poh

JOE P. KIRBY

DAN L. KIRBY:n

September 2, 1980

Surety Association of America - Minimum Premium

I presume by now you have a separate special file on the \$30 minimum premium. The purpose of this memo is to give you the attached Surety Association mailings which indicate that the new premium is in effect in California, Idaho, New York, Ohio, Virginia, Colorado, Florida, Indiana, Arizona, Maine, Massachusetts and New Mexico.

MONTANA — 25

STATE, COUNTY, CITY, TOWN, VILLAGE AND ALL
OTHER POLITICAL SUBDIVISIONS

MINIMUM PREMIUMS:

Annual Minimum Premium and Annual Earned Minimum, unless
otherwise specifically stated, is in all cases:

•INDIVIDUAL BONDS—\$30.00

SCHEDULE BONDS—The Annual Minimum Premium charge shall be
\$3.50 fully earned for each item or position covered, or each item
added or deducted, but in no event shall the Annual Minimum
•Premium for the entire bond be less than \$30.00.

GENERAL RATE:

Per \$1000
Per Annum

All Officers and Employees not hereinafter specifically rated	\$3.50
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SPECIFIC RATES:

Treasurer and Tax Collector or Treasurer-Collector (dual
position), including any official under whatever title,
who is charged with the duties of Treasurer or Tax
Collector.

Up to \$25,000	\$8.00
\$25,000—\$200.00 and on excess to \$50,000	6.00
\$50,000—\$350.00 and on excess to \$100,000	5.00
\$100,000—\$600.00 and on excess over \$100,000 ..	4.00

Deputy and all subordinates of Treasurer, Tax Collector or Treasurer-Collector	4.00
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State Treasurer	4.00
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Sheriff and all subordinates	5.00
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NOTARIES PUBLIC:

•\$1000 Bond—\$30.00 for 3 years.

Western Surety Company

OFF-4a

4b-OFF

**MONTANA
NOTARY PUBLIC
ERRORS AND OMISSIONS LIABILITY INSURANCE
INDIVIDUAL POLICY**

1. Policies can be written in the following limits at the following 3 year term premiums:

\$ 5,000 policy	\$20.00
\$10,000 policy	\$35.00
\$15,000 policy	\$37.50
\$25,000 policy	\$45.00
2. If a policy is written mid-term, collect pro-rata premium in advance. For a \$5,000 policy collect \$6.25 per year or fraction of the year for the remainder of the Notary's Commission term. For a \$10,000 policy collect \$10 per year or fraction thereof. For a \$15,000 policy collect \$12.50 per year or fraction thereof. For a \$25,000 policy collect \$15 per year or fraction thereof.

**NOTARY PUBLIC ERRORS AND OMISSIONS
EMPLOYER'S COMPREHENSIVE POLICY**

1. Policies can be written in the following limits at the following annual rates, per notary:

\$ 5,000 policy	\$ 6.25/yr. per notary
\$10,000 policy	\$10.00/yr. per notary
\$15,000 policy	\$12.50/yr. per notary
\$25,000 policy	\$15.00/yr. per notary

Examples:

- (a) \$10,000 Policy Covering 6 Individual Notaries.
(6 x \$10) Annual Premium \$60.00
- (b) \$5,000 Policy Covering 5 Individual Notaries.
(5 x \$6.25) Annual Premium \$31.25

2. The policy term is one year.
3. Additional notaries employed during the term of the policy will be included at no extra cost. There will be no return premium for notaries who end their employment during the term of the policy.
4. Employer's liability coverage as to Notary E & O is included at no additional premium.

4b-OFF

Western Surety Company

VISITOR'S REGISTER

HOUSE JUDICIARY COMMITTEE

BILL SENATE BILL 142

DATE March 2, 1983

SPONSOR SENATOR GAGE

[illegible]

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

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.