

MINUTES OF MEETING  
SENATE JUDICIARY COMMITTEE  
March 3, 1983

The thirty-fourth meeting of the Senate Judiciary Committee was called to order by Chairman Jean A. Turnage on March 3, 1983 at 10:05 a.m. in Room 325, State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF HOUSE BILL 433: Representative Mueller, sponsor, advised that the major purpose of this bill is to save counties money. Under the provisions of HB433 a prospective juror could not be disqualified from serving on a jury solely by virtue of the fact that he is a depositor of funds with a financial institution. This is particularly a problem in those areas which are so small that they have few banks. Representative Mueller informed the Committee of a case in Libby and Livingston which resulted in additional expenses to the counties when the majority of the jurors could not be selected because of their relationship with a bank. He also advised that Marc Racicot had testified in favor of this bill before the House committee.

There being no proponents, no opponents, and no questions from the Committee, Representative Mueller closed by stating this is essentially a housekeeping change which would alleviate problems and cause a savings of money to counties.

CONSIDERATION OF HOUSE BILL 481: Representative Phillips, sponsor, advised that this bill would give the U.S. Customs Service and Immigration and Naturalization Services the power to make arrests in Montana for violations of Montana law. The officers employed by these divisions are federal officers, but currently the statutes do not give them the authority to make arrests while on duty.

PROPOSERS: Donald Myhra, District Director of the U.S. Customs Service for the Great Falls District, testified in favor of the bill and submitted his written testimony (see attached Exhibit "A").

Paul Hayes, representing the U.S. Immigration and Naturalization Service, testified in favor of the bill. He stated that all officers receive extensive training in criminal and civil law, along with law enforcement training, and are therefore qualified to make arrests (see attached statement marked as Exhibit "B").

John Scully, representing the Montana Sheriff and Peace Officer's Association, voiced his support for this legislation.

There being no further proponents, and no opponents, the hearing was opened to questions from the Committee.

The Committee questioned if the officers now have the power to detain a person. They were advised that the officers do not and that it is now necessary for them to "play a game" of continuing to process a persons entry into the country in order to detain the person at the border until an officer with the power to arrest can arrive. It was noted that this is a severe problem in those places where the law enforcement must come from hundreds of miles away.

Senator Galt questioned if the officers now have the power to arrest for violations of federal law and was advised that they do.

Senator Berg questioned if the officers themselves are in support of this bill and he was advised that they are. It was noted that Sheriff O'Reilly was present and favored the bill.

There being no further questions, the hearing was closed.

CONSIDERATION OF HOUSE BILL 417: Representative Metcalf advised that he was sponsoring this bill at the request of the Board of Pharmacists. It is their feeling that the list of controlled substances contained in state law should be updated to conform with controlled substances listed in the Code of Federal Regulation.

PROPONENTS: Warren Amole, representing the State Board of Pharmacists, testified in favor of the bill and submitted his written testimony (see attached Exhibit "C"). He especially encouraged the adoption of HB417 as many drug possession cases use the defense that the Board has delegated its authority to schedule drugs to the federal government.

There being no further proponents and no opponents, the hearing was opened to questions from the Committee.

Senator Halligan questioned why the list of controlled substances was not automatically updated. He was advised that the Administrative Code Committee stated this could not be done and the current lists have not been updated since 1973.

Senator Mazurek questioned if any convictions had been overturned since we do not have the updated list in our statutes. He was advised that none have been, but this defense keeps arising.

Counsel advised the Committee that the Supreme Court has found that the legislature cannot delegate authority to adopt federal regulation as they may be amended from time to time.

There being no further discussion, the hearing was closed.

ACTION ON HOUSE BILL 481: The Committee agreed that federal officers have a practical problem. Senator Mazurek questioned if we risk potential liability to the state by enacting this law. The Committee felt the liability would be on the officer. Counsel advised that conceivably the officer already has the power to make an arrest. The Committee felt the enactment of HB481 would eliminate any question of the officer's authority. Senator Daniels moved HB481 BE CONCURRED IN. This motion carried with Senators Berg and Crippen voting in opposition.

CONSIDERATION OF HOUSE BILL 130: Representative Stobie, sponsor, turned the hearing over to the witnesses to present their material supporting this bill.

PROPOSERS: Sheriff Chuck O'Reilly of Lewis and Clark County and also representative for the Montana Sheriff and Peace Officer's Association, read a letter from the Criminal Investigation Bureau of the Department of Justice which enumerated the reasons for passage of this bill (see attached Exhibit "D"). There is currently a wide-spread problem with the sale of look-alike drugs through the mail. Sheriff O'Reilly displayed imitation cross-tops and black beauties, along with mail-order advertisements promoting these drugs (see Exhibit "E"). The urgent problem with these drugs is that they are popular among the junior high and grade school children. Since they are not as potent as their controlled counterparts, the children take two and three times as many to obtain the same effects. When they are then introduced to the real drug, they continue taking two and three times as many which consequently causes severe overdoses and sometimes death.

Nick Rotering, an attorney for the Department of Institutions, supported the bill from a treatment standpoint. He emphasized the need to control these types of drugs as abuses of these drugs can be very dangerous.

Jerry Loendark, representing the Montana Medical Association, advised that he has worked with many young people who take these types of substances and strongly urged the Committee to give the bill favorable consideration.

Vern Sloulin, representing the State Department of Health, testified in favor of the bill and advised that 36 states currently have laws relating to look-alike drugs. He advised that the F.D.A. strongly encourages each state to adopt their own laws relating to these drugs.

There being no further proponents, and no opponents, the hearing was opened to questions from the Committee.

Senator Berg questioned if the passage of this bill would prevent the mail-order companies from advertising. Mr. Sloulin stated that the states who have laws against look-alike drugs have been able to stop the ads. It was also noted that page 5 of the bill lists a penalty for advertising.

Sheriff O'Reilly further advised the Committee that an additional danger with these drugs is that the black beauties are sometimes laced with strychnine.

Senator Crippen asked Representative Stobie why the House had deleted the language that the drugs could be possessed for research purposes. Representative Stobie believed that this was covered in another section of the statutes. Senator Crippen also inquired why the word "possession" had been stricken. He was advised that this would make the law too strict for middle school children and that the major intent of the bill is to deter possession for sale purposes and advertising.

Senator Mazurek felt the fine should be raised to \$50,000 so as to be consistent with other drug law penalties.

There being no further discussion, the hearing was closed.

FURTHER CONSIDERATION OF HOUSE BILL 589: Senator Daniels advised the Committee that he had misunderstood the intent of HB589 and would therefore like to have it returned to the Committee for reconsideration. The Committee acknowledged this request.

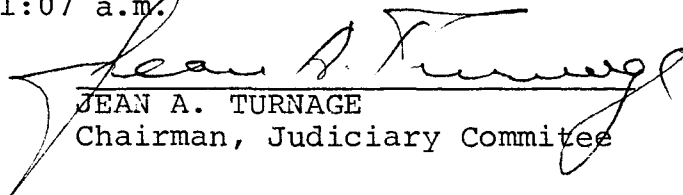
ACTION ON HOUSE BILL 417: The Committee felt they were ready to consider executive action on this bill. Senator Berg moved HB417 BE CONCURRED IN. This motion carried unanimously.

ACTION ON HOUSE BILL 433: The Committee could see the problems the smaller jurisdictions have in selecting jurors when there are so few banks in the community. Senator Brown moved HB433 BE CONCURRED IN. This motion carried with Senator Daniels voting in opposition.

ACTION ON HOUSE BILL 130: Counsel advised the Committee that there is a need to include a subsection (3) in the bill which would define person as including a corporation in order to apply the penalties to corporations under 45-2-311. Senator Galt moved to adopt the amendment as above proposed. This motion carried unanimously. Senator Mazurek felt that in order to be consistent with other drug penalties, the fine should be increased from \$25,000 to \$50,000. He moved that this increase should be inserted on page 3, line 21 and page 4, line 19. Senator Mazurek also thought the stricken portion of the bill relating to a presumption in favor of deferred sentences for minors should be reinserted. These motions carried unanimously. Senator Mazurek then moved that HB130 BE CONCURRED IN AS AMENDED. This motion carried unanimously.

Senate Judiciary Committee  
March 3, 1983  
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ADJOURN: There being no further business before the Committee,  
the meeting was adjourned at 11:07 a.m.

  
JEAN A. TURNAGE  
Chairman, Judiciary Committee

ROLL CALL

JUDICIARY COMMITTEE

48th LEGISLATIVE SESSION - - 1983

Date 3-3-83

NAME	PRESENT	ABSENT	EXCUSED
	✓		
Berg, Harry K. (D)			
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Daniels, M. K. (D)	✓		
Galt, Jack E. (R)	✓		
Halligan, Mike (D)	✓		
Hazelbaker, Frank W. (R)	✓		
Mazurek, Joseph P. (D)	✓		
Shaw, James N. (R)	✓		
Turnage, Jean A. (R)	✓		



EXHIBIT "A"  
March 3, 1983

March 3, 1983

STATEMENT: MONTANA PEACE OFFICER STATUS

TO: CHAIRMAN & COMMITTEE MEMBERS, SENATE JUDICIARY COMMITTEE

On behalf of the United States Customs Service I am happy to have this opportunity to express my concern and interest in attaining Senate passage and final enactment of legislation to establish Peace Officer status in Montana for United States Customs and Immigration and Naturalization Service officers when they are on duty.

The primary need for passage of this legislation is to eliminate the gap which is now present in coordinated enforcement efforts among U.S. Customs and INS, state and local enforcement agencies in the State of Montana. That gap or breakdown is due to the fact that our officers do not have the authority to legally detain, hold, or arrest a wanted person even though there is reasonable cause to believe that a local or state warrant for arrest exists.

Basically this creates a really bad situation potentially resulting in one or the other of the following:

1. Our officer detains the wanted party without actual authority, leaving the officer open to later litigation action (civil suits) or
2. The wanted person is released to "hit the road".

The passage of Montana Peace Officer status for Customs and INS officers is long overdue and becomes more critical as our Treasury Enforcement Communications System (TECS) data base grows.

We presently have 15 border ports and stations in Montana where arriving persons are processed. Further, we have 7 other inland locations, airports and ports of entry, where arriving persons are processed.



Donald W. Myhra  
District Director, Great Falls, Montana

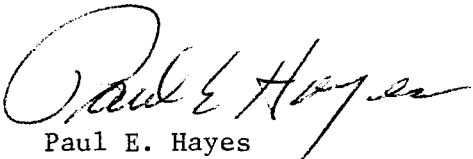


EXHIBIT "B"  
March 3, 1983

STATEMENT: Montana Peace Officers Status

On behalf of the United States Immigration and Naturalization Service I would like to express my concurrence with the statement submitted by Mr. Myhra, the District Director of U.S. Customs Service.

I would like to add that all officers of both Services are extensively trained in law enforcement procedures including arrest and detention of violators of Federal Laws and I anticipate no problems with officers acting within the scope of authority that the enactment of this legislation would provide.

A handwritten signature in cursive script, reading "Paul E. Hayes".

Paul E. Hayes  
Acting District Director  
U.S. Immigration & Naturalization Service  
Helena, MT

# BOARD OF PHARMACISTS

EXHIBIT "C"  
March 3, 1983



TED SCHWINDEN, GOVERNOR

1424 9TH AVENUE  
HELENA, MONTANA 59620  
(406)449-3737

## STATE OF MONTANA

WARREN AMOLE, EXECUTIVE SECRETARY

510 1ST AVE. NO., SUITE 100

GREAT FALLS, MT 59401

(406)761-5131

Date: March 3, 1983

To: Senator Jean Turnage, Chairman, Judiciary Committee, and Members

From: Warren R. Amole, jr., R.Ph., Executive Secretary

A handwritten signature in cursive script, appearing to read "W. Amole, jr.", written in dark ink.

Re: House Bill 417

This Bill is an act updating the list of controlled substances. There are two main reasons why the Board of Pharmacists is requesting the passage of this Bill.

Number one is to have the drugs listed in the various schedules to conform with the listing in the Code of Federal Regulations. In the present statutes (referred to on page 1 of the Bill) most drugs are listed consecutively in paragraphs. This makes it difficult to locate a specific drug. You will notice that the format in this Bill names the drugs in list form. This will be helpful to anyone who has need to use the list. It will also make it easier to add, delete, or change drugs in the future.

Number two is that although the Board is given the authority to schedule, reschedule or delete a "controlled substance" (50-32-203 MCA), it has been recommended by the Attorney General's office and others that the Board support a bill in each session of the Legislature that reflects any revisions that may have occurred in the two year interval between legislative sessions. This Bill will help to eliminate any discrepancy between the statutory schedules of controlled substances and administrative rules.

In addition, whenever a drug possession case goes to court that involves a drug that has been scheduled by the Board but not by the Legislature, the defendant uses the defense that the Board has delegated its authority to

"C"  
3-3-83

schedule drugs to the Federal Government. So far the judges have not allowed this defense ploy but this Bill would eliminate this possibility. ~~The present language could be construed as an unauthorized, improper and invalid delegation of Board or legislative authority.~~

The Board of Pharmacists recommends the passage of this Bill.



SHERIFF'S DEPARTMENT

15 N. Ewing P.O. Box 1685  
Helena, Mt. 59624  
406-443-1010 Business  
406-442-7880 Emergency Only

CHUCK O'REILLY, SHERIFF

January 12, 1982

TO: Sheriff Chuck O'Reilly

FROM: Det. Sam McCormack  
Det. Richard Hammerbacker  
Criminal Investigations Bureau

In regard to our conversation regarding "look alike" drugs and the ever increasing problem we are having with them in Helena and Lewis and Clark County, we have put together the following information.

As members of the American-Canadian Drug Enforcement Task Force, we have had occasion to discuss this problem with officers from different areas of Montana, North Dakota and Canada. All are experiencing similar problems with the appearance of these look alike drugs.

We have included advertisements taken from different tabloids and magazines available in Montana. The large color ad from Mid South Pharmaceutical Inc. was received through the mail by a respectable Helena resident who did not request such information.

Most of the stimulant-type pills contain ephedrine sulfate, caffeine or other non-controlled stimulants which are designed to give the effect of amphetamines or "speed". The analgesics or "downers" usually have Doxylamine succinate or salicylamid, again non-controlled, non prescription drugs designed to give the effect of controlled depressant-type drugs.

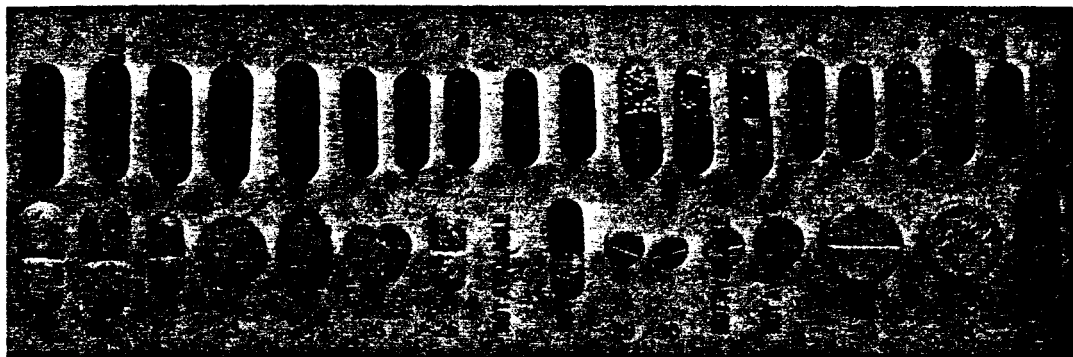
The price of these look alikes are stated in the advertisements, but on the streets, in the Helena area, the "Black Beauties" a stimulant are selling for three dollars each, while the cross-tops, a stimulant, are selling for about twenty-five cents each.

We find these two particular look alikes to be very popular with high school and junior high students. These youngsters believe that they are buying real amphetamines. It is not unusual for a person to take three or four of these look alikes to gain a desired effect.

The real danger is when one of these users happens upon genuine amphetamines or depressants. If either of these are taken in any quantity it can result in serious health problems or even death.

EXHIBIT "E"  
March 3, 1983

# Mid South Pharmaceutical, Inc.



## Body Stimulants

- #'s 1-26 Ephedrine sulfate, Phenopropanolamine HCL, Caffeine
- #'s 29-30 Ephedrine sulfate

## Nighttime Analgesic

- #'s 33-35 Salicylamid, Acetaminophen, Doxylamine succinate

If you ever feel you need an **EXTRA BOOST**, then we've got something for you!

## EXTRA ENERGY

- ... To make it through your day.
- ... For an "after-hours" boost.
- ... To make the long haul.
- ... During "exam-cram" time.
- ... To work all through the night.

They're **SAFE** (when taken as directed), they're **LEGAL**, and best of all, they're **AVAILABLE TO YOU** ..... the strongest high energy stimulants you can buy without a prescription!

- This brochure includes a photograph of **STIMULANTS** that many believe to be the strongest and most effective available.
- Up until now, these products have been hard to find and very expensive. But **NOW** you can buy direct in wholesale quantities at wholesale prices.
- We offer quantity discounts too. For example, order 2 bottles and receive a 3rd bottle free.

- Send us a cashier's check or money order to receive a 5% discount on the product price, and we will pay the UPS shipping charges. (Bus or Air Freight extra).
- Get your order quicker by phoning in your MasterCard, VISA number or COD order.
- We are looking forward to doing business with you. Don't wait, call or write now!

## PRICING

### BODY STIMULANTS

Sealed Bottle 1000 ... \$117.00  
Sealed Bottle 100 .... 15.00  
(Products #29 and 30 available in bottles of 1,000 only)

### NIGHTTIME ANALGESIC

Sealed Bottle 100 .... 17.00

**WARNING:** When abused, these products can cause excitement and insomnia. Individuals with high blood pressure, heart disease, diabetes, thyroid disease, or those taking other medications, should consult with a physician before use!

These products should not be taken as a substitute for sleep. They are intended for adult use ONLY, and are not available in stores.

**Don't let the "blahs" get the best of you--FIGHT BACK with an extra boost!!**

Mid South Pharmaceutical, Inc.  
P.O. Box 584 — EA  
Hixson, Tennessee 37343  
1-800-251-6002, Ext. 14 Toll Free

14  
3-3-83

Bulk Rate  
U.S. Postage  
PAID  
Chattanooga, TN  
Permit No. 5

# SPECIAL BONUS OFFER

Purchase any two of these products, and get a third product of your choice FREE!!!

Each product comes in bottles of 100 — for ONLY \$15.00, or 1,000 for only \$117.00.

Larger quantities available. For information and pricing telephone 1-615-842-6597.

For fastest delivery, place order on Master Card, Visa, or C.O.D.  
Telephone TOLL FREE 1-800-251-6002, Ext. 14, 9 a.m. to 10 p.m. Eastern Standard Time.

We pay shipping on Visa and Master Card.  
Orders shipped promptly.

## RECOMMENDED DAILY DOSAGE

Stimulants — 1 Capsule Daily  
Each Product Contains: Ephedrine Sulfate, Phenopropalamine HCL, Caffeine  
These capsules not for use beyond recommended daily dosage, and our company assumes no liability for misuse.

Product #	No. of Bottles	Unit Cost	Total
		x	
		x	
		N/C x	
		x	
		x	
		N/C x	
		x	
		x	
		N/C x	
		x	
		x	
		N/C x	

SAVE 5% BY ORDERING WITH A CASHIERS CHECK OR MONEY ORDER ONLY!  
WE PAY SHIPPING CHARGES ADDITIONALLY

TOTAL ENCLOSED

\*We will add shipping and C.O.D. charges for C.O.D.  
Tennessee Residents Add 6 1/4% Sales Tax  
Ship via ☐ UPS ☐ Bus ☐ Mail ☐ Other

Send this section with payment to:

Mid South Pharmaceutical, Inc.  
P.O. Box 584 — EA  
Hixson, Tennessee 37343

Payment ☐ Cashier Check ☐ Money Order ☐ C.O.D ☐ Bank Wire ☐ Cash

Master Card # \_\_\_\_\_  
VISA # \_\_\_\_\_  
Expiration Date \_\_\_\_\_

Please print

Customer Name \_\_\_\_\_  
# and Street \_\_\_\_\_  
City, State, Zip \_\_\_\_\_  
Telephone \_\_\_\_\_

For C.O.D or charge card orders only, call 1-800-251-6002, Ext. 14, 9 a.m. to 10 p.m. EST.  
For additional information call 1-615-842-6597.  
I am at least 18 years of age, and it is not my intent to misuse any products.

Signature \_\_\_\_\_

14"  
3-3-83

RT...GLOBE SHOPPING A

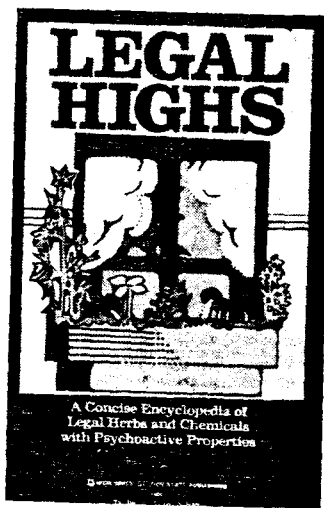
DIET PILLS

LEGAL STIMULANTS

WHOLE BODY  
BLOOD CIRCULATION  
NOT ADRUG  
TO AVOID

PLUS 11.11 PERCENT HANDLING

Ad taken from Globe, a weekly tabloid "scandal sheet" available at most grocery stores and news stands in Montana



**LEGAL HIGHS.** A concise encyclopedia of legal herbs and chemicals with psychoactive properties. Many potent substances which the lawmakers have overlooked, where to obtain them, how to use them, what their effects are. Includes photographic illustrations.  
A-BKLEGAL \$2.95

11 1/2" x 3-3/8"  
Ad taken from Krupp Mail Order Magazine purchased in Helena

## LEGAL HIGHS Provide Smoking Pleasure

Since the dawn of recorded history, herbs have been used as natural stimulants, mellowing agents, aphrodisiacs and psychoactive energizers. These pure, high-quality herbal blends contain no chemicals, additives or fibers. All are slightly psychoactive and may produce a mild buzz. Please Note: These smoking herbs are not harmful to your body. We make them available for your experimentation and enjoyment. We do not endorse their use or imply that they are as powerful as illegal psychoactive substances.



**A. Highlights.** A new herbal blend of Damiana, Boldo Leaves, Blessed Thistle and Spearmint. For a mellow high. 1/2 ounce.  
A-KEHIL \$3.00

**B. Volupte.** This sensuous blend contains Yohimbe Bark, Ginseng, Damiana, and 7 more "loving" herbs. For you and your lover. 15 grams.  
A-KLVOL \$4.00

**C. Lettucene 1.** This hashish substitute smokes and tastes like the real thing. The extra strength

comes from Wild Lettuce, Damiana and African Yohimbe Bark. 3 grams.  
A-KELET1 \$5.00

**D. Absinthe.** According to lore, the active ingredients of absinthe are strangely affected by mixing with alcohol, producing an intensely intoxicating beverage with a remarkable anisette flavor. Absinthe was made by steeping the herbs and adding vodka or rum. Here is a base of the original ingredients and instructions for making your own "notorious" liqueur. 7.9 grams.  
A-KEABS3 \$5.00

**E. Lettucene 3.** "Hash Oil" increases the potency and smoothness of your favorite smoke. 4 gram vial.  
A-KELET3 \$5.00

**F. Smoking Herb Sampler.** Want to find out what smoking herbs is like? Try this sample packet of 3 popular blends.  
A-KESHS \$3.75

**G. Lettucene Opium Blend.** This is a pure extract of a combination of lettuce strains for wonderful effect on mind and body. 15 grams.  
A-KELOB6 \$6.25



# STANDING COMMITTEE REPORT

March 3

1983

MR. **PRESIDENT**

We, your committee on **Judiciary**

having had under consideration **House** Bill No. **130**

**Stobie (Mazurek)**

Respectfully report as follows: That **House** Bill No. **130**

**third reading bill, be amended as follows:**

1. Page 2.  
Following: line 9.  
Insert: "(3) "Person" includes any individual, business association, partnership or corporation."
2. Page 3, line 21.  
Strike: "\$25,000"  
Insert: "\$50,000"
3. Page 4, line 19.  
Strike: "\$25,000"  
Insert: "\$50,000"
4. Page 4.  
Following: line 22.  
Continued on Page 2  
And, as so amended,  
~~DOES~~ BE CONCURRED IN

*J.A.*

4. Insert: "(3) A person under 18 years of age convicted of a first violation under this section shall be presumed to be entitled to a deferred imposition of sentence."

And, as so amended,

BE CONCURRED IN

# STANDING COMMITTEE REPORT

March 3,

19 83

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration House Bill No. 417

Metcalf (Hazelbaker)

Respectfully report as follows: That House Bill No. 417  
third reading bill,

BE CONCURRED IN

~~XXXXXX~~  
~~DO NOT PASS~~

*J.A.T.*

# STANDING COMMITTEE REPORT

March 3, 19 83

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration House Bill No. 433

Mueller (Brown)

Respectfully report as follows: That House Bill No. 433  
third reading bill,

BE CONCURRED IN

~~XXXXXXX~~

*J.C.*

# STANDING COMMITTEE REPORT

March 3, 19 83

PRESIDENT  
MR. ....

We, your committee on Judiciary

having had under consideration House Bill No. 481  
Phillips (Daniels)

Respectfully report as follows: That House Bill No. 481  
third reading bill,

BE CONCURRED IN

~~XXXXXX~~  
DO PASS