

MINUTES FOR THE MEETING
JUDICIARY COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

February 20, 1985

The meeting of the Judiciary Committee was called to order by Chairman Tom Hannah on Tuesday, February 20, 1985 at 7:00 a.m. in Room 312-3 of the State Capitol.

ROLL CALL: All members were present with the exception of Rep. Poff who was previously excused.

CONSIDERATION OF HOUSE BILL NO. 790: Rep. Jack Ramirez, District #87, testified in support of HB 790. This bill deals with when a writ of attachment may be issued. It has been held by the Montana Supreme Court that a guaranteed contract is not subject to attachment because the attachment statute requires that an individual can have attachment only when that person has an action upon a contract, express or implied, for the direct payment of money. The Montana Supreme Court has interpreted direct payment of money to exclude guaranteed contracts. (He referred to two Montana Supreme Court cases, Stensvad vs Miners & Merchant's Bank of Roundup, 183M 160, (1979) and Wall vs Brookman 72M228, (1925)). Because of the supreme court decision, if you cannot get an attachment on a contract of guarantee, what has happened is that the banks have gone almost consistently to surety contracts.

There being no further proponents or opponents, Rep. Ramirez closed.

There were no questions from the committee, and hearing closed on HB 790.

CONSIDERATION OF HOUSE BILL NO. 760: Rep. Dennis Nathe, District #19, chief sponsor, testified in support of the bill. He stated that this is a bill which would amend the divorce laws of the state of Montana. The bill does two things: first, it would provide that a decree of marriage dissolution may not be entered until at least 45 days after service on the respondent; second, before the final decree is entered, the issues of child support, custody maintenance and property division must be resolved. He said that if these issues are not resolved, they can go on for five, six and seven years, thus, making it increasingly more difficult to obtain settlements. Rep. Nathe further stated that if the committee feels that the 45-day period is too long, he would not object to that figure being decreased. Rep. Nathe feels that HB 760 may help to salvage a few more marriages in this state. He feels the

present time frame of 21 days is too short of a period to obtain a divorce.

Pat Melby, representing the Montana State Bar Association, stated that the Montana Supreme Court supports this bill as far as having child support arrangements, property division, and other issues of the marriage resolved before the final decree is entered.

There being no further proponents or opponents, Rep. Nathe closed.

The floor was opened for questioning.

In response to a question asked by Rep. Krueger, Mr. Melby feels that it is important that all elements of dispute be settled before the final decree is entered. He feels all the issues involved should be made a part of the final decree.

There being no further questions, hearing closed on HB 760.

CONSIDERATION OF HOUSE BILL NO. 779: Rep. Mary Ellen Connelly, District #8, chief sponsor of the bill, appeared and offered testimony. She said this is an act creating a special law enforcement assistance account; authorizing the account to receive funds and properties forfeited under federal law, and to be used in Montana for law enforcement. She said a program is being set up in the Department of Justice with undercover agents which has appropriated monies for.

There being no further proponents or opponents, Rep. Connelly closed. She feels this is a good idea in that it would bring money into Montana to help in this area because Montana is a dumping ground for drugs.

Rep. Krueger directed a question to Kim Kradolpher from the attorney general's office. He asked what kinds of amount of money or property are we talking about. Ms. Kradolpher stated that she really doesn't have an answer to that. There has been some federal legislation that has been amending several forfeiture statutes, and it would basically depend on what kinds of property and monies are forfeited under federal forfeiture proceedings. The federal legislation which was enacted last fall will allow some of it to go to the states if it is insured that it will go directly to law enforcement for these kinds of activities.

There being no further questions, hearing closed on HB 779.

CONSIDERATION OF HOUSE BILL NO. 744: Hearing commenced on HB 744. Rep. Gary Spaeth, District #84, chief sponsor of HB 744 testified. The bill essentially inserts the word "start" in two provisions under 50-53-103. He stated that this bill imposes a standard of strict liability in essentially starting a fire.

Lyle Nagel, representing the State Volunteer Fireman's Association, wished to go on record as supporting this bill.

Dennis Hemmer, representing the Montana Department of State Lands, testified as a proponent. A copy of his written testimony was marked as Exhibit A and attached hereto.

There being no further proponents or opponents, Rep. Spaeth closed.

The floor was opened up for questions from the committee.

Rep. O'Hara wanted to know how much liability could be placed on somebody. Rep. Spaeth responded by saying that a lot of liability could be placed on an individual. Rep. O'Hara stated his reservation about where the line would be drawn. Rep. Spaeth pointed out that if a person did not have any assets, he could not be sued. It was Rep. O'Hara's opinion that passage of this bill would not provide a deterrent. Rep. Spaeth stated that it would only apply to one or two cases per year.

Rep. O'Hara further asked if it wouldn't be difficult to prove that a person started a fire. Rep. Spaeth stated that to prove a person started a fire would certainly be the greatest hurdle to overcome.

An executive session was called at 7:50 a.m.

ACTION ON HOUSE BILL NO. 790: Rep. Gould moved that HB 790 DO PASS. The motion was seconded by Rep. Keyser and carried unanimously.

ACTION ON HOUSE BILL NO. 744: Rep. Brown moved that HB 744 DO PASS. The motion was seconded by Rep. O'Hara and further discussed.

Rep. Mercer spoke in opposition to passing this bill. He said this bill says if a person wasn't negligent, he is liable.

Rep. Keyser feels this is a good bill and long overdue. He feels that the person who started the fire should be liable.

It was Rep. Darko's opinion that even if a person didn't start a fire on purpose but was careless in allowing it to spread, that person should still be held liable for starting the fire.

Rep. Brown feels this bill is reasonable.

Rep. Grady feels this certainly could get out of hand by

putting a person out of business. He feels the present law has enough teeth.

Rep. Eudaily stated that he has a little problem with the bill. He feels the educational program is not very effective.

The question was called on the DO PASS motion, and it carried 11-5. (See roll call vote.)

CONSIDERATION OF HOUSE BILL NO. 803: Rep. Ray Peck, District #15, sponsor of the bill, testified. He stated that this bill is an act conforming juror and witness fees in courts not of record to those of courts of record.

Jim Jensen, representing the Montana Magistrate's Association, stated that HB 803 is as straightforward as it can be. The amount paid to jurors and witnesses is being changed to conform with the district court fees. He stated that the current \$3.00 fee paid to a juror doesn't even buy lunch and gas. Therefore, the \$3.00 fee was increased to \$10.00.

There being no further proponents or opponents, Rep. Peck closed.

There being no questions from the committee, hearing on HB 803 closed.

CONSIDERATION OF HOUSE BILL NO. 834: Rep. Toni R. Bergene, District #41, sponsor of the bill, testified on its behalf. She informed the committee that she was very happy to be able to present this piece of legislation today since the subject has been so important to her. HB 834 is an act to revise the law stating what property is exempt from execution on a judgment. She submitted an amendment to this bill which was marked as Exhibit B and attached hereto. The amendments deal with the title of the bill. She pointed out the definition of "individual." Regarding the property exemptions in a bankruptcy action, in current law we have always said that it is different for those people who are married. If you are a single head of household or if you are unmarried, you weren't allowed to keep exemptions that someone who is married could. She went on to say that bankruptcy judges have had a lot of problems with this because they don't understand this type of discrimination. Under this bill, there is no distinction between a married person and a single person.

Rep. Rapp-Svrcek came in.

Jeffrey Kirkland, vice-president - governmental relations, Montana Credit Unions League, testified as a proponent to the bill. A copy of his written testimony was marked as Exhibit C and attached hereto.

There being no further proponents or opponents, Rep. Bergene closed.

The floor was opened to questions from the committee.

Rep. Rapp-Svrcek stated that he is concerned with aggregate value of the tools of the trade. He asked if this meant that all but \$750 worth of an individual's tools could be taken from him? Mr. Kirkland said that it would be the case under this bill. The federal bankruptcy code as well has a \$750 cap on tools of the trade. Mr. Kirkland wanted the committee to keep in mind that this is for a natural person. If a lot of the contractors, carpenters and other types of professional people are incorporated entities, these exemptions would not apply to those incorporated entities.

There being no further questions, hearing on HB 834 closed.

EXECUTIVE SESSION

Chairman Hannah called an executive session to order at 8:30 a.m.

ACTION ON HOUSE BILL NO. 803: Rep. Brown moved that HB 803 DO PASS. The motion was seconded by Rep. Cobb.

Rep. Hannah admonished the committee that they should be ready to defend the cost impact that this will have on local government when HB 803 is brought before the House floor.

Rep. Darko spoke in favor of the bill saying that by increasing the juror's fees, more jurors will be willing to serve on a jury panel.

Rep. Mercer moved the following amendment:

1. Page 1, following line 23.

Insert: "(4) A juror who is excused from attendance upon his own motion on the first day of his appearance in obedience to notice or who has been summoned as a special juror and not sworn in, the trial of the case shall forfeit per diem and mileage."

The motion was seconded by Rep. O'Hara, and it carried unanimously on a voice vote.

Rep. Brown further moved that HB 803 DO PASS AS AMENDED. The motion was seconded by Rep. Hammond. The question was called, and the motion carried unanimously.

(Rep. Eudaily requested a fiscal note be prepared.)

ACTION ON HOUSE BILL NO. 760: Rep. O'Hara moved that HB 760 DO PASS. The motion was seconded by Rep. Hammond and

further discussed.

Rep. Krueger stated his objection to the do pass motion. He doesn't agree with the sponsor of the bill in that it will help marriages keep intact. He doesn't feel that people should be forced to remain married if they don't wish to. He also pointed out that in many cases, it can take up to six months or longer to settle the issues of property settlement, child custody and child support matters.

Rep. Krueger made a substitute motion that HB 760 DO NOT PASS. The motion was seconded by Rep. Brown and further discussed.

Rep. Mercer spoke against the substitute motion by saying that if people are allowed to get a divorce before any of the other issues are resolved, a tremendous driving force will be taken away to get these other issues resolved.

The question was called on the DO NOT PASS motion, and it carried 9-6. (See roll call vote)

ACTION ON HOUSE BILL NO. 779: Rep. O'Hara moved that HB 779 DO PASS. The motion was seconded by Rep. Brown.

Rep. O'Hara further moved to amend HB 779 on page 2, lines 6 and 7 to strike subsection (3) in its entirety. Furthermore, the amendment would include striking the "." on line 5 following "contraband" and inserting "; and". The motion was seconded by Rep. Gould and discussed.

Rep. Hannah spoke against the motion to amend and said that we need to be prepared in the areas dealing with gambling.

The question was called on the motion to amend, and it failed on a voice vote.

Rep. O'Hara moved that HB 779 DO PASS. The motion was seconded by Rep. Gould and carried with Reps. Brown, Rapp-Svrcek and Montayne dissenting.

ACTION ON HOUSE BILL NO. 714: Rep. Brown moved that HB 714 DO PASS. The motion was seconded by Rep. O'Hara.

Rep. Krueger stated that this bill limits the claims of the state up to \$300,000 no matter how many claimants are involved. He said that this bill allows the state to be protected only to the extent of \$300,000. He feels this is a gross inequity in relation to society in general. It is also limiting claims in relation to severe cases. He feels that this bill is going clearly beyond the grounds of any other civil action in the court system. We are attempting to protect the government based on circumstances

unknown.

Therefore, Rep. Krueger made a substitute motion for a DO NOT PASS. The motion was seconded by Rep. Brown and the committee further discussed the intent of HB 714.

Rep. Addy said that this bill places a cap on damages awarded. He feels it would punish mostly the innocent victims who are hurt the most. Rep. Addy said the effect of this bill is to bring the \$1 million cap down in a situation where one person has been killed to \$300,000. In a situation where two people have been killed, it has been lowered to \$600,000. The bill is changing the \$1 million per occurrence. The only time there is a \$1 million cap in an accident is when four or more people are killed. We are saying here that if the state runs over a person, a person better not be hurt too badly because he is going to be on his own.

Rep. O'Hara wanted to know if a person who was hurt in an accident caused by the state can come back and file a lawsuit against the person who caused the accident. Rep. Addy said that as long as it wasn't gross negligence or willful or wrongful conduct, the governmental employee was acting in the scope of his duties and wouldn't be held personally liable.

Following further discussion, Rep. Addy moved that HB 714 BE TABLED. The motion was seconded by Rep. Keyser and the motion carried with Reps. Eudaily and O'Hara dissenting.

CONSIDERATION OF HOUSE BILL NO. 767: Hearing commenced on HB 767. Rep. Steve Waldron, District #58 and sponsor of the bill, offered testimony in support of it. He said this bill is a housekeeping bill that clears up a little problem with the court system in Montana in that the funding for the court system is split. It is split between the state and local governments. Rep. Waldron stated that he has always been in favor of trying to put the district courts under the authority of the supreme court and to have the funding run through the state. House Bill No. 767 would freeze county mill levies for district courts at 1984 levels and ship the money to the state to offset court costs statewide. The bill would further allow a \$10 increase in motor vehicle registration fees to help the state meet its obligation to pay for district court costs. The district courts enforce state law. He feels quite a burden has been placed on counties by requiring them to fund a state job. There is absolutely no fiscal control over district courts when that responsibility is placed on counties.

Greg Jackson, representing the Urban Coalition which represents Montana's larger cities and counties in the state, stated that full funding of district court costs and admin-

istration of district courts is a high priority with the Urban Coalition. The problem is a matter of cost. Over the past few years, the costs of district courts has increased substantially at the county level. We are talking about money over and above the mileages that were accessed for the operation of district courts which is increasing every year. The counties get the money to fund deficits from the general fund from payment in lieu of tax monies, and from revenue sharing. If the federal government follows through on the President's budget, revenue sharing will either be eliminated or decreased substantially over the next year which will present a major problem in funding district court costs among the counties.

Mr. Jackson said the bill would increase motor vehicle fees by \$10 per category. His figures indicate that the cost for the biennium would be \$26 million. Of that \$26 million, approximately 14.6 million would be funded by the millages. The additional \$12 million would be funded by the increase in the motor vehicle fees.

Don Peoples, chief executive of Butte-Silver Bow and also the chairman of Urban Coalition, testified in support of the bill. He said there is no question that these district courts are a major item of expense and a major item of concern for local government. Even though a grant and aid program has been substantial aid to them, it has not covered the full cost of district courts. He said that the coalition looks at this bill as a direct approach to property tax reduction as far as funding proposals.

Mort McBain, administrator of Yellowstone County, testified as a proponent to this bill. He stated that the county has no control over district court funding. He feels that it is unfair to burden county commissioners when they have no control over the situation.

Pat Melby, representing the State Bar of Montana, stated that unification of the court system in this state has long been a priority of the state bar. He said the State Bar supports this bill as a great step forward in finally unifying the judicial department.

Gordon Morris, representing the Montana Association of Counties, testified as a proponent. He, too, said that this is a matter of great concern to counties from the standpoint of the problems they face trying to administer budgetary concerns and court mandated or questions in regard to the inherent powers of the court. He referred to a Report to the 48th Legislature Joint Subcommittee on Judiciary Dealing with District Courts and also a Report to the 49th Legislature all dealing with the same related problems. He said the report which was submitted in 1984 reports the same problems as the ones that were reported in 1983. As a result, the Montana Association of Counties did create as a high priority item the state assumption of district courts throughout the state. He informed the committee of

the major dilemma confronting the legislature at this time. He said that every county commissioner who is responsible for district court budgets lives in fear that his county is going to experience or undergo a major court-case involving major litigative expenses. Mr. Morris mentioned SB 25 which calls for full funding of the expenses associated with indigent legal and at the same time full funding of the grant and aid program. Insofar that there is no fiscal note attached to this bill, there would be, in Mr. Morris' estimate, approximately \$25 million worth of revenue generated by the combination of local property taxes and the increase in the motor vehicle fees. It would cost approximately \$46.5 million to fully fund for the biennium district court operations through the state. He further stated that the association's minimum position would be positive legislative action in regards to SB 25 and HB 767 as their preferred position.

There being no further proponents or opponents, Rep. Waldron closed. He asked the committee to seriously consider whether or not to take the logical approach and unify the court system. He feels that this bill fits everything together and is the best way to deal with the present problem.

The floor was opened to questions from the committee.

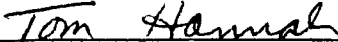
In response to a question, Rep. Waldron said if they find that district courts can be operated at a lower cost, then less money will be appropriated and vice-versa.

Rep. Eudaily wanted to know if we would be penalizing those district courts that have the biggest costs. Rep. Waldron said he didn't feel they would because most of the counties that have the largest costs are paying above 6 mills. This bill provides that they would only have to pay into the state general fund the 6 mills.

Mr. Morris further commented that in 1984, there were nine counties that did not use their district court levy authority at this time. They funded district court operations out of their general funds. Section B on page 5 attempts to deal with that situation.

Following further general question, hearing closed on HB 767.

ADJOURN: A motion having been made and seconded, the meeting was adjourned at 10:00 a.m. Chairman Hannah reminded the committee that an executive session is scheduled for 7:00 this evening.


TOM HANNAH, Chairman

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 2/20/85

NAME	PRESENT	ABSENT	EXCUSED
Tom Hannah (Chairman)	✓		
Dave Brown (Vice Chairman)	✓		
Kelly Addy	✓		
Toni Bergene	✓		
John Cobb	✓		
Paula Darko	✓		
Ralph Eudaily	✓		
Budd Gould	✓		
Edward Grady	✓		
Joe Hammond	✓		
Kerry Keyser	✓		
Kurt Krueger	✓		
John Mercer	✓		
Joan Miles	✓		
John Montayne	✓		
Jesse O'Hara	✓		
Bing Poff			✓
Paul Rapp-Svrcek	✓		

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

EXECUTIVE SESSION - 7:30 p.m.

Date 2/20/85

NAME	PRESENT	ABSENT	EXCUSED
Tom Hannah (Chairman)	✓		
Dave Brown (Vice Chairman)	✓		
Kelly Addy	✓		
Toni Bergene			✓
John Cobb	✓		
Paula Darko			✓
Ralph Eudaily	✓		
Budd Gould			✓
Edward Grady			✓
Joe Hammond	✓		
Kerry Keyser	✓		
Kurt Krueger	✓		
John Mercer	✓		
Joan Miles			✓
John Montayne	✓		
Jesse O'Hara	✓		
Bing Poff	✓		
Paul Rapp-Svrcek	✓		

STANDING COMMITTEE REPORT

February 20

19 85

page 1 of 2 (SB 95)

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 95

FIRST reading copy (WHITE)
color

LIMITING TIME WHEN BAD FAITH ACTION AGAINST INSURER CAN BE COMMENCED

Respectfully report as follows: That HOUSE Bill No. 95

be amended as follows:

1. Title, line 8.

Strike: "ADJUDICATED"

Insert: "SETTLED OR CONCLUDED"

2. Page 1, line 15.

Following: "until"

Strike: ", in an action on"

3. Page 1, line 16.

Following: "claim"

Strike: ", a court of law has established"

Insert: "has been settled or otherwise concluded. The underlying claim is the claim involving"

4. Page 1, line 17.

Following: "insured's"

Insert: "contractual"

DO PASS

(continued)

Following: "insurer"

Strike: ", in" through "good faith" on line 19.

5. Page 1, line 21.

Following: "insured"

Strike: ", in" through "faith" on line 22.

6. Page 1, following line 22.

Insert: "Section 2. Accrual of claim for bad faith period.

For purposes of the statute of limitations, the claim
for bad faith does not accrue until the date the
underlying claim is settled or otherwise concluded."

Remember subsequent sections.

AND AS AMENDED,
DO NOT PASS

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE February 20, 1985 BILL NO. HB 95 TIME 8:05 p.m.

NAME	AYE	NAY
Kelly Addy	✓	
Toni Bergene		✓
John Cobb	✓	
Paula Darko	✓	
Ralph Eudaily		✓
Budd Gould		✓
Edward Grady		
Joe Hammond	✓	
Kerry Keyser		✓
Kurt Krueger	✓	
John Mercer	✓	
Joan Miles	✓	
John Montayne		✓
Jesse O'Hara		✓
Bing Poff	✓	
Paul Rapp-Svrcek	✓	
Dave Brown (Vice Chairman)	✓	
Tom Hannah (Chairman)		✓

Marcene Lynn
Secretary

Tom Hannah
Chairman

Motion: Rep. Addy made a substitute motion for a DO NOT PASS.

The motion was seconded by Rep. Kreuger. The question was

called and the motion carried 10-7.

STANDING COMMITTEE REPORT

February 20 19 85

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 511

FIRST reading copy (WHITE)
color

PUNITIVE DAMAGES - LIMITS ON; JUDICIAL DETERMINATION OF

Respectfully report as follows: That HOUSE Bill No. 511

be amended as follows:

1. Page 1, line 17.

Following: "amount"

Strike: "equal to" through "excess of" on line 19.

Insert: "not to exceed"

**AND AS AMENDED,
DO NOT PASS
~~DEPASS~~**

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE February 20, 1985 BILL NO. HB 511 TIME 8:25 p.m.

NAME	AYE	NAY
Kelly Addy		✓
Toni Bergene		
John Cobb	✓	
Paula Darko		✓
Ralph Eudaily	✓	
Budd Gould	✓	
Edward Grady	✓	
Joe Hammond		✓
Kerry Keyser	✓	
Kurt Krueger		✓
John Mercer	✓	
Joan Miles		✓
John Montayne		✓
Jesse O'Hara	✓	
Bing Poff		✓
Paul Rapp-Svrcek		✓
Dave Brown (Vice Chairman)		✓
Tom Hannah (Chairman)	✓	

Marcene Lynn
Secretary

Tom Hannah
Chairman

Motion: Rep. O'Hara moved that HB 511 DO PASS AS AMENDED. The
motion was seconded by Rep. Keyser and failed 8-9. Without
recommendation, the vote was reversed, and HB 511 was passed
out of committee with a do not pass as amended recommendation

STANDING COMMITTEE REPORT

February 20 19 35

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 363

FIRST reading copy (WHITE)
color

LIMITING PUNITIVE DAMAGES IN CIVIL ACTIONS

Respectfully report as follows: That HOUSE Bill No. 363

be amended as follows:

1. Page 1, line 19.

Following: "damages"

Strike: ";" through "(c)" on line 23.

2. Page 1, line 24.

Following: "damages"

Strike: "beyond" through "case" on page 2, line 1.

Insert: "by clear and convincing evidence"

3. Page 2, following line 7.

Strike: Subsection (4) in its entirety.

AND AS AMENDED,
~~DO NOT PASS~~
~~DO PASS~~

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE February 20, 1985 BILL NO. HB 363 TIME 9:15 p.m.

NAME	AYE	NAY
Kelly Addy	✓	
Toni Bergene	✓	
John Cobb		✓
Paula Darko	✓	
Ralph Eudaily		✓
Budd Gould		✓
Edward Grady		✓
Joe Hammond	✓	
Kerry Keyser		✓
Kurt Krueger	✓	
John Mercer		✓
Joan Miles	✓	
John Montayne	✓	
Jesse O'Hara		✓
Bing Poff	✓	
Paul Rapp-Svrcek	✓	
Dave Brown (Vice Chairman)	✓	
Tom Hannah (Chairman)		✓

Marcene Lynn
Secretary

Tom Hannah
Chairman

Motion: Rep. Brown made a substitute motion that HB 363 DO NOT
PASS AS AMENDED. The motion was seconded by Rep. Krueger and
carried 10-8.

STANDING COMMITTEE REPORT

February 20 19 95

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 400

FIRST reading copy (WHITE)
color

PROHIBIT EVIDENCE OF DEFENDANT'S FINANCIAL WORTH FOR PUNITIVE DAMAGES

Respectfully report as follows: That HOUSE Bill No. 400

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

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE February 20, 1985 BILL NO. HB 400 TIME 8:40 p.m.

NAME	AYE	NAY
Kelly Addy		✓
Toni Bergene	✓	
John Cobb	✓	
Paula Darko		✓
Ralph Eudaily	✓	
Budd Gould	✓	
Edward Grady	✓	
Joe Hammond		✓
Kerry Keyser	✓	
Kurt Krueger		✓
John Mercer		✓
Joan Miles		✓
John Montayne		✓
Jesse O'Hara	✓	
Bing Poff		✓
Paul Rapp-Svrcek		✓
Dave Brown (Vice Chairman)		✓
Tom Hannah (Chairman)	✓	

Marcene Lynn
Secretary

Tom Hannah
Chairman

Motion: Rep. O'Hara moved that HB 400 DO PASS. The motion was
seconded by Rep. Keyser. The motion failed 8-11. Without
objection, the vote was reversed, and the bill left the committee
with a do not pass recommendation.

STANDING COMMITTEE REPORT

February 20

19 85

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE

Bill No. 533

FIRST reading copy (WHITE)
color

PUNITIVE DAMAGES TO BE PAID TO BENEFIT OF STATE OF MONTANA

Respectfully report as follows: That HOUSE

Bill No. 533

be amended as follows:

1. Title, line 5.

Strike: "A PORTION OF AWARDS"

Insert: "ONE-FOURTH OF EACH AWARD"

2. Page 2, line 3.

Following: "defendant."

Strike: "Punitive" through "remainder to" on line 14.

Insert: "One-fourth of the damage award must"

Re-number subsequent subsection.

AND AS AMENDED,

DO NOT PASS

~~DO PASS~~

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE February 20, 1985 BILL NO. HB 533 TIME 8:50 P.m

NAME	AYE	NAY
Kelly Addy		✓
Toni Bergene		✓
John Cobb	✓	
Paula Darko		✓
Ralph Eudaily	✓	
Budd Gould	✓	
Edward Grady	✓	
Joe Hammond		✓
Kerry Keyser	✓	
Kurt Krueger		✓
John Mercer	✓	
Joan Miles		✓
John Montayne		✓
Jesse O'Hara	✓	
Bing Poff		✓
Paul Rapp-Svrcek		✓
Dave Brown (Vice Chairman)		✓
Tom Hannah (Chairman)	✓	

Marcene Lynn
Secretary

Tom Hannah
Chairman

Motion: Rep. O'Hara moved that HB 533 DO PASS AS AMENDED. The
motion was seconded by Rep. Keyser. The motion failed 8-10.

Without objection, the vote was reversed, and HB 533 left the
committee with a do not pass recommendation.

STANDING COMMITTEE REPORT

February 20 19 85

MR. SPEAKER:.....

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 536.....

FIRST reading copy (WHITE)
color

PUNITIVE DAMAGES - ACTUAL MALICE: VIOLATION OF STATUTE BASIS FOR

Respectfully report as follows: That HOUSE Bill No. 536.....

DO NOT PASS
DO PASS

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE February 20, 1985 BILL NO. HB 536 TIME 9:05 p.m.

NAME	AYE	NAY
Kelly Addy		✓
Toni Bergene		✓
John Cobb	✓	
Paula Darko		✓
Ralph Eudaily	✓	
Budd Gould	✓	
Edward Grady	✓	
Joe Hammond		✓
Kerry Keyser	✓	
Kurt Krueger		✓
John Mercer	✓	✓
Joan Miles		✓
John Montayne		✓
Jesse O'Hara	✓	
Bing Poff		✓
Paul Rapp-Svrcek		✓
Dave Brown (Vice Chairman)		✓
Tom Hannah (Chairman)	✓	

Marcene Lynn
Secretary

Tom Hannah
Chairman

Motion: Rep. Keyser moved that HB 536 DO PASS. The motion was
seconded by Rep. O'Hara and failed 7-11. Without objection,
the vote was reversed, and the bill left the committee with
a do not pass recommendation.

STANDING COMMITTEE REPORT

February 20 19 85

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 803

FIRST reading copy (WHITE)
color

CONFORM JUROR/WITNESS FEES OF CRT. NOT OF RECORD TO THOSE OF COURT OF RECORD

Respectfully report as follows: That HOUSE Bill No. 803

be amended as follows:

1. Page 1, following line 23.

Insert: "(4) A juror who is excused from attendance upon his own motion on the first day of his appearance in obedience to notice or who has been summoned as a special juror and not sworn in the trial of the case shall forfeit per diem and mileage."

AND AS AMENDED,

DO PASS

STANDING COMMITTEE REPORT

February 20

19 85

MR. SPEAKER:.....

JUDICIARY

We, your committee on.....

having had under consideration HOUSE Bill No. 779

FIRST reading copy (WHITE)
color

CREATES SPECIAL LAW ENFORCEMENT ACCOUNT - APPROPRIATES PROCEEDS

Respectfully report as follows: That..... HOUSE Bill No. 779

DO PASS

STATE PUB. CO.
Helena, Mont.

.....
REP. TOM HANNAN

Chairman.

COMMITTEE SECRETARY

STANDING COMMITTEE REPORT

February 20 19 25

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 760

FIRST reading copy (WHITE)
color

**DISSOLUTION DECREE MAY NOT BE ENTERED UNTIL 90 DAYS AFTER FILING
AND SERVICE**

Respectfully report as follows: That HOUSE Bill No. 760

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

STATE PUB. CO.
Helena, Mont.

REP. TOM HANNAH

Chairman.

COMMITTEE SECRETARY

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE February 20, 1985 BILL NO. HB 760 TIME 8:45 a.m.

NAME	AYE	NAY
Kelly Addy		
Toni Bergene	✓	
John Cobb		✓
Paula Darko	✓	
Ralph Eudaily		✓
Budd Gould	✓	
Edward Grady	✓	
Joe Hammond	✓	
Kerry Keyser		✓
Kurt Krueger	✓	
John Mercer		✓
Joan Miles	✓	
John Montayne	✓	
Jesse O'Hara		✓
Bing Poff	✓	
Paul Rapp-Svrcek	✓	
Dave Brown (Vice Chairman)	✓	
Tom Hannah (Chairman)		✓

Marcene Lynn
Secretary

Tom Hannah
Chairman

Motion: Rep. Kreuger made a substitute motion that HB 760 DO

NOT PASS. The motion was seconded by Rep. Brown and carried

9-6.

STANDING COMMITTEE REPORT

February 20 19 35

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE

Bill No. 744

FIRST reading copy (WHITE)
color

TO IMPOSE STRICT LIABILITY FOR STARTING A FIRE

Respectfully report as follows: That HOUSE

Bill No. 744

DO PASS

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE 2-20-85 BILL NO. 744 TIME 7:55

NAME	AYE	NAY
Kelly Addy	✓	
Toni Bergene	✓	
John Cobb		✓
Paula Darko	✓	
Ralph Eudaily		✓
Budd Gould	✓	
Edward Grady		✓
Joe Hammond	✓	
Kerry Keyser	✓	
Kurt Krueger	✓	
John Mercer		✓
Joan Miles	✓	
John Montayne		✓
Jesse O'Hara	✓	
Bing Poff		
Paul Rapp-Svrcek		
Dave Brown (Vice Chairman)	✓	
Tom Hannah (Chairman)	✓	

Marcene Lynn
Secretary

Tom Hannah
Chairman

Motion: Rep. Brown moved that HB 744 DO PASS. The motion was
seconded by Rep. O'Hara and carried 11-5.

STANDING COMMITTEE REPORT

..... February 20 1935

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 790

FIRST reading copy (WHITE+)
color

LOAN GUARANTY AS CONTRACT UPON WHICH WRIT OF ATTACHMENT MAY ISSUE

Respectfully report as follows: That HOUSE Bill No. 790

DO PASS

TESTIMONY ON HOUSE BILL 744

BY DENNIS HEMMER, COMMISSIONER OF STATE LANDS

As Montana's forested areas become more populated with residences, power lines, and recreationists, the number of forest fires will continue to increase. Along with this increase come the increased costs of fire suppression, which are borne mainly by the general taxpayers of this state, as the supplemental appropriation for 1984 suppression costs demonstrates. Also, the amount of damage from these fires, which may burn homes located in timbered areas, has increased dramatically.

With the potential loss to the taxpayers and to property owners so high, the Department feels that utilities, logging companies, homeowners, ranchers, railroads, and recreationists should all be required to use extreme care not to start fires.

Section 50-63-103, MCA, currently requires that extreme care of persons who intentionally set or leave a fire, such as a slash fire. That statute makes those persons liable for suppression costs or property damages if the fire spreads, whether or not they were negligent in setting or leaving the fire. This is called strict liability.

However, 50-63-103, as interpreted by the Montana Supreme Court in a 1982 decision, does not impose strict liability on a person who does not intentionally set or leave a fire. In order to recover these suppression costs, the state must convince a jury that the person who started the fire was negligent. In the lawsuit to which I refer, a logging contractor started a fire when a chainsaw operated by one of the contractor's employees backfired. The jury found that the contractor was not negligent. As a result of the jury's finding and the Supreme Court decision, the taxpayers were forced to pay \$127,000 in suppression costs.

House Bill 744 offers you, the lawmakers of the state, the opportunity to determine the standard of care which those who inhabit Montana's wildlands must exercise. Presently the state can recover its suppression costs and a private landowner his property damages only if a person who inadvertently starts a fire acted negligently--that is, failed to use ordinary care. House Bill 744 requires the highest degree of care--fire prevention. Although the bill could impose liability against a person whom a jury might find did not act negligently, it would result in fewer wildfires and decreased costs to the taxpayer. The questions for you to answer are: Who should bear the cost of fighting these fires? The taxpayer or the person who starts them? And who should pay for adjoining landowners' property damages? I urge your support of House Bill 744.

House Bill 834

Proposed amendments:

1. Page 1, line 6 following "JUDGMENT" insert:

" , EXCEPTING CHILD SUPPORT AND SPOUSAL MAINTENANCE OBLIGATIONS"

2. Page 5, line 5, insert:

"NEW SECTION. Section 9. Exception for child support and spousal maintenance obligations. The above exemptions are not applicable to a child support obligation and spousal maintenance obligation."

3. Page 5, following new section 9 insert:

"Section 10. Repealer. Sections 25-13-601, 25-13-602, 25-13-611 through 25-13-614, 25-13-616, and 25-13-617, MCA, are repealed.

Section 11. Codification instruction. Sections 1 through 9 are intended to be codified as an integral part of Title 25, chapter 13, part 6."

HOUSE BILL 834

TESTIMONY OF JEFFRY M. KIRKLAND
VICE PRESIDENT-GOVERNMENTAL RELATIONS
MONTANA CREDIT UNIONS LEAGUE

BEFORE THE HOUSE JUDICIARY COMMITTEE
ON WEDNESDAY, 20 FEBRUARY 1985

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, FOR THE RECORD I AM JEFF KIRKLAND, VICE PRESIDENT-GOVERNMENTAL RELATIONS FOR THE MONTANA CREDIT UNIONS LEAGUE. OUR LEAGUE IS A TRADE ASSOCIATION REPRESENTING 110 OF THE 113 CREDIT UNIONS IN MONTANA. WE STAND IN SUPPORT OF HOUSE BILL 834.

IN 1981 THE LEGISLATURE AMENDED SECTION 31-2-106, MCA, TO PROHIBIT A "DEBTOR" IN MONTANA FROM USING THE GENERALLY MORE LIBERAL SCHEDULE OF EXEMPTIONS PROVIDED BY THE FEDERAL BANKRUPTCY CODE OF 1978. UNDER THE FEDERAL BANKRUPTCY CODE, THE ONLY ACTION ANY STATE LEGISLATURE COULD TAKE WITH REFERENCE TO THE CODE WAS TO ENACT SUCH A PROHIBITION. WE ARGUED THAT THE FEDERAL BANKRUPTCY EXEMPTIONS WERE TOO LIBERAL AND THAT MONTANA DEBTORS SHOULD HAVE TO USE THE GENERALLY LESS ADVANTAGEOUS MONTANA EXEMPTIONS.

THEREFORE, UNDER THE 1981 PROHIBITION, THE DEBTOR HAS TO USE MONTANA'S EXEMPTIONS AS SET OUT IN TITLE 25, CHAPTER 13, PART 6, MCA.

HOWEVER, ONCE THE LEGISLATURE LOOKED CAREFULLY AT THE PROVISIONS OF TITLE 25, CHAPTER 13, PART 6, IT SAW THAT A NUMBER OF SECTIONS WERE ENACTED AS FAR BACK AS 1895. MANY OF

THEM HAD LITTLE OR NO RELEVANCE TO ASSETS MONTANANS MIGHT HOLD IN THE 1980s. STATUTES REFER TO HORSES, COWS AND CALVES, HOGS, DOMESTIC FOWLS, FEED FOR ALL OF THEM FOR THREE MONTHS, A CART OR WAGON, A SET OF SLEDS, A VEHICLE AND HARNESS USED BY A PHYSICIAN OR MINISTER FOR MAKING PROFESSIONAL VISITS, A SEWING MACHINE, AND STOVES, STOVEPIPES, AND STOVE FURNITURE.

WHEN A NUMBER OF LEGISLATORS REALIZED THAT THEY HAD PASSED LEGISLATION REQUIRING DEBTORS IN MONTANA TO USE THOSE ARCHAIC EXEMPTION STATUTES, THEY FELT STRONGLY THAT THE EXEMPTION STATUTES SHOULD BE BROUGHT INTO THE 20TH CENTURY. BUT REVISING THE EXEMPTION STATUTES IS NOT AN EASY TASK.

LEGISLATION WAS INTRODUCED DURING THE 1983 SESSION BUT TOO LATE TO BE ACTED UPON BEFORE THE TRANSMITTAL DEADLINE. THE LEGISLATION WAS A PROJECT OF THREE SENIOR LAW STUDENTS OF THE UNIVERSITY OF MONTANA LAW SCHOOL. BUT AT THE HEARING BEFORE THE SENATE JUDICIARY COMMITTEE THERE WERE NO PROPONENTS--NOT EVEN THE STUDENTS. THE BILL WAS TABLED.

AFTER THE 1983 LEGISLATIVE SESSION THE MONTANA CREDIT UNIONS LEAGUE TOOK UP THE CHALLENGE OF DEVELOPING LEGISLATION TO BRING THE EXEMPT PROPERTY STATUTES INTO THE 1980s. WE HELD A NUMBER OF GROUP WORK SESSIONS DURING OUR CONFERENCES AND MEETINGS DURING 1983 AND 1984, AND CREDIT UNION OFFICIALS AND EMPLOYEES HAVE DEVELOPED THE GENERAL CATEGORIES AND VALUES OF EXEMPTIONS YOU SEE BEFORE YOU IN HOUSE BILL 834.

OUR MISSION STATEMENT WAS, "THE LEGISLATION WE PROPOSE SHOULD PROVIDE A THOUGHTFUL BALANCE BETWEEN THE RIGHTS OF

CREDITORS AND THE RIGHTS OF DEBTORS." WE THINK WE HAVE SUCCEEDED IN CREATING AND MAINTAINING THAT BALANCE IN HOUSE BILL 834. WE ALSO WORKED UNDER THE THEORY THAT MONTANA'S EXEMPTIONS SHOULD BE GENERALLY LESS ADVANTAGEOUS THAN THE EXEMPTIONS OF THE FEDERAL BANKRUPTCY CODE.

OBVIOUSLY, THIS IS A COMPLEX SUBJECT AND A COMPLEX TASK. AFTER EXAMINING THE CURRENT STATUTES, WE FELT THAT THEY ARE SO ARCHAIC WE COULD NOT SIMPLY AMEND THE EXISTING SECTIONS. THEREFORE, OUR BILL REPEALS ALL THE EXISTING SECTIONS OF TITLE 25, CHAPTER 13, PART 6, WITH THE EXCEPTION OF SECTION 25-13-615, WHICH IS THE "HOMESTEAD EXEMPTION." IN THEIR PLACE, WE HAVE CREATED BRAND NEW LANGUAGE, TAKEN IN PART FROM THE UNIFORM EXEMPTIONS ACT, THE FEDERAL BANKRUPTCY CODE, AND EXEMPTION ACTS FROM SEVERAL STATES.

WE HAVE INCLUDED AS AN INTEGRAL PART OF THIS TESTIMONY A FACT SHEET EXPLAINING THE CURRENT LAW (TITLE 25, CHAPTER 13, PART 6) SECTION BY SECTION AND THE PROPOSED REVISIONS. WE HAVE ALSO INCLUDED A COMPARISON OF PROVISIONS OF THE CURRENT LAW, THE FEDERAL BANKRUPTCY CODE, AND THE REVISIONS OF HOUSE BILL 834.

REVISION OF THE STATE'S EXEMPT PROPERTY STATUTES IS BADLY NEEDED AND BADLY OVERDUE. WE, AS A TRADE ASSOCIATION, HAVE COMMITTED OURSELVES TO THE TASK OVER THE PAST 18 MONTHS AND FEEL THAT WE HAVE DEVELOPED A WORKABLE PIECE OF LEGISLATION THAT DOES "PROVIDE A THOUGHTFUL BALANCE BETWEEN THE RIGHTS OF CREDITORS AND THE RIGHTS OF DEBTORS."

FOR THOSE COMPELLING REASONS, WE URGE THAT THIS
COMMITTEE RECOMMEND THAT HOUSE BILL 834 "DO PASS."

HOUSE BILL 834
PROPOSED RECODIFICATION OF STATUTES
CONTROLLING PROPERTY EXEMPT FROM EXECUTION

Currently, Title 25, chapter 13, part 6 of the Montana Code Annotated (MCA) exempts certain property owned by a judgment debtor or a debtor under a bankruptcy proceeding from sale on execution or from distribution to his creditors. The purpose of those statutes is to leave the debtor with sufficient property after execution or discharge to support himself and his dependents. In bankruptcy, it's called a "fresh start."

This narrative will discuss each section of Montana's current exemption statutes and, if change or replacement is proposed for that section, will explain why and how the change or replacement will satisfy the need for change.

CURRENT LAW AND PROPOSED CHANGES:

Section 25-13-601, MCA, protects a debtor from a waiver of his right to claim property as exempt. If a debtor has waived his right to claim property as exempt as a provision of an unsecured promissory note, a creditor shall not be able to enforce the contractual waiver. However, an unsecured promissory note is only one kind of unsecured transaction. Because there seems to be little reason to limit a debtor's protection to transactions involving only promissory notes, the proposal would expand the debtor's protection as currently controlled by this section. Section 7 would make a waiver of exemptions made in favor of any unsecured creditor unenforceable.

Section 25-13-602, MCA, allows unmarried persons who are over 60 years old to claim the same exemptions as those granted to a head of a household. This section seems to be an attempt to

rectify some of the inequities made by current exemption laws against unmarried persons and persons who are not heads of households. In today's socio-economic environment, it seems arbitrary to deny exemptions based on marital or familial status of the debtor.

House Bill 834 removes those two distinctions (marital or familial status) from the exemption laws by (1) repealing Section 25-13-602, MCA, and (2) defining "individual" in Section 2(2) as "a natural person"--not including a partnership, joint venture, sole proprietorship, or corporation. When the two current distinctions are removed, there is no need for Section 25-13-602, because all persons, regardless of age or marital or familial status, will be entitled to all statutory exemptions.

Section 25-13-611, MCA, provides that a debtor may exempt certain household property from execution. This section was enacted in 1905. Subsection (b) provides exemptions for all chairs, tables, desks, and books--but only to an aggregate value of \$200. That's not enough for even the most austere "fresh start" today. Subsection (d) provides exemptions for one horse, a saddle and bridle, four hogs, 50 domestic fowls, and feed for all of them for 90 days--hardly representative of property a Montanan might own in the mid-1980s. This section also discriminates against unmarried persons who are not heads of households by disallowing them many of the exemptions listed for heads of households in this section.

This bill repeals Section 25-13-611, MCA, in its entirety. **Section 6** takes its place. **Section 6** contains dollar limitations that are realistic by today's standards, provide a balance between fairness to the debtor and to the creditor, and allow the debtor to make a "fresh start" after execution or discharge. The discrimination against unmarried persons who

are not heads of households has been removed. And finally, Section 6 eliminates much of the superfluous statutory language covering numerous unnecessary categories of exemptions.

Section 25-13-612, MCA, is Montana's current "tools of the trade" exemption. It was enacted in 1895. Some of the exemptions provided by this section and occupations covered are drastically outdated. The section exempts a peddler's horse or mule and one cart or wagon. It also exempts a farmer's implements of husbandry up to \$600 in value. Section 25-13-612 also provides an unfair advantage to certain occupations. For example, professionals are allowed to keep the tools of their trade without dollar limitations, while a farmer can only exempt up to \$600 in implements, two oxen or horses and their harness, food for such oxen or horses for 90 days, one wagon, and \$200 in seed for planting. Again, this section discriminates against unmarried persons who are not heads of households.

HB 834 repeals Section 25-13-612, MCA, in its entirety and incorporates the "tools of the trade" exemption in Section 6. The "tools of the trade" exemption treats all occupations fairly by allowing the debtor to exempt up to \$750 in property that he uses to earn his living, regardless of occupation. Since this proposal deals specifically with "individuals" and excludes partnerships, joint ventures, sole proprietorships, and corporations, such debtors are limited to filing Chapter 7 or Chapter 13 bankruptcies. Farms today, as well as professions, are typically incorporated entities and therefore would not fall under Montana's exempt property statutes, either current or proposed. Chapter 11, Corporate Reorganization, of the Federal Bankruptcy Code would control.

Section 25-13-613, MCA, is unnecessary. Current Section 2-9-318, MCA, already exempts property of a governmental entity from execution stemming from a liability suit. The exemption for personal property in Section 6 will cover any other similar property necessary for the debtor or his dependents. Therefore, the proposal repeals Section 25-13-613.

Section 25-13-614, MCA, exempts earnings of a debtor for personal services rendered within 45 days of execution. The bill repeals this section, since federal law protects the wages of a debtor subject to execution under the Consumer Credit Protection Act. Federal law offers the necessary protection to the debtor and his dependents.

Section 25-13-615, MCA, is Montana's "homestead" exemption. Although the \$40,000 homestead exemption provided for in current statute is substantially higher than the \$7,500 provided for in the Federal Bankruptcy Code, the chances of the legislature decreasing that exemption are negligible, since the legislature increased it from \$20,000 to \$40,000 in 1981. Therefore, the proposal leaves Section 25-13-615 as it now stands.

Section 25-13-616, MCA, exempts all moneys, benefits, privileges, and immunities accruing from unmatured life insurance contracts if the annual premium is less than \$500. House Bill 834 would repeal Section 25-13-616. Section 5 creates a \$500 exemption of accrued dividends, interest, or loan values of unmatured life insurance contracts no matter how much annual premium is paid.

Section 25-13-617, MCA, is Montana's current automobile or truck exemption. This section discriminates against persons who are not heads of households or who are less than 60 years

old. It also disallows the automobile exemption to debtors whose creditors are seeking to execute on the debtor's automobile for debts incurred "for the common necessities of life." It seems arbitrary to treat such a debt differently from any other type of debt.

HB 834 repeals Section 25-13-617 in its entirety. Section 6 contains the automobile exemption, to an aggregate value of \$1,000. (The legislature in 1981 increased the automobile exemption from \$300 to the current \$1,000.) If a motor vehicle is also a "tool of the trade," Section 6 allows the debtor to "stack" any unused portion of the "tools of the trade" exemption to further exempt the motor vehicle.

HOUSE BILL 834:

Section 1 - Short Title

The short title is the "Montana Exempt Property Act."

Section 2 - Definitions

Section 2 contains definitions for "individual," "dependent," "security interest," "statutory lien," "value," and "lien."

Section 3 - Property Exempt Without Limitation

Section 3 would exempt, without dollar limitation, certain health aids, unemployment benefits and public assistance, benefits payable for hospital or medical care, veteran's benefits, and awards under the Montana Crime Victim Reparation Act.

Section 4 - Property Exempt To The Extent Reasonably Necessary For Support

Other benefits such as insurance proceeds, alimony or separate maintenance payments, or payments from pension or profit-

sharing plans would be exempted "to the extent reasonably necessary for support" of the debtor and his dependents in Section 4.

Section 5 - Exemption Of Unmatured Life Insurance Contracts

Section 5 allows an debtor the exemption of his unmatured life insurance contracts which insure either himself or a dependent. It limits to an aggregate of \$500 the amount the debtor can exempt in cash surrender or loan value of those contracts.

Section 6 - Exemptions Of Personal Property Subject To Value Limitations

Section 6 provides that a debtor may exempt certain household goods, heirlooms, tools of the trade, and motor vehicles subject to specific value limitations.

Subsection (1)(a) allows the exemption of certain household goods, furnishings, appliances, wearing apparel, books, crops, musical instruments, and jewelry, not exceeding \$200 in any one item, to an aggregate value of \$3,000.

Subsection (1)(b) provides an exemption of up to \$750 for family portraits and heirlooms.

Subsection (2) provides a "tools of the trade" exemption not to exceed an aggregate value of \$750.

Subsection (3) provides a motor vehicle exemption of up to \$1,000 and further provides that any unused amount of the "tools of the trade" exemption may be applied to further exempt the motor vehicle.

Section 7 - Waiver Of Exemptions

Section 7 would make a contractual waiver of exemptions made in favor of any unsecured creditor unenforceable.

Section 8 - Statutory Lien Or Security Interest

Section 8 protects secured creditors and allows them to enforce claims against exempt property. This is consistent with Montana law as it now stands.

Section 9 - Repealer

Section 9 repeals Sections 25-13-601, 25-13-602, 25-13-611, 25-13-612, 25-13-613, 25-13-614, 25-13-616, and 25-13-617, MCA.

THE PROHIBITION

31-2-106. Exempt property -- bankruptcy proceeding. No individual may exempt from the property of the estate in any bankruptcy proceeding the property specified in 11 U.S.C. 522 (d) except property exempt from execution of judgment as provided in Title 25, chapter 13, part 6.

CURRENT MONTANA LAW

Section 25-13-611, MCA, controls "Necessary household property" exemptions:

- A. All wearing apparel of debtor and family
- B. All chairs, tables, desks, and books to a value of \$200
- C. All necessary household, table, and kitchen furniture
- D. 1 horse, saddle, bridle; 2 cows and their calves; 4 hogs; 50 domestic fowl; and feed for the animals for 3 months
- E. 1 clock
- F. All family pictures
- G. An unmarried person who is not the head of a family is not entitled to any of the above exemptions except that of wearing apparel

Section 25-13-617, MCA, provides a \$1,000 exemption for a motor vehicle (increased from \$300 in 1981).

Section 25-13-612, MCA, controls "Tools of the trade" exemptions for marrieds or heads of families:

- A. For a farmer, farming utensils and implements not exceeding \$600 in value; 2 oxen or horses or mules and their harnesses; 1 cart or wagon....
- B. For a mechanic or artisan, tools or implements necessary to carry on trade
- C. For a doctor or dentist, instruments necessary to exercise profession, along with scientific and professional libraries and necessary office furniture
- D. For an attorney or minister, professional libraries and necessary office furniture
- E. For a miner, his cabin and implements and appliances necessary for carrying on mining operations, to an aggregate value of \$1,000
- F. No person can claim more than one of these exemptions

CURRENT FEDERAL BANKRUPTCY CODE

Exempt property and values:

- A. Debtor's interest in a motor vehicle to \$1,200
- B. Debtor's interest, not to exceed \$200 in value, in any particular item of household furnishings, household goods, wearing apparel, appliances, animals, books, crops, or musical instruments--to a maximum value of \$4,000.
- C. Debtor's aggregate interest in jewelry to \$500
- D. Debtor's aggregate interest in implements, professional books, or tools of the trade to \$750
- E. Debtor's aggregate interest to \$400 in any property--plus any unused portion of the homestead exemption (under the Federal Bankruptcy Code, the homestead exemption is \$7,500)

CURRENT MONTANA LAW

- A. Unemployment benefits generally exempt, 39-51-3105, MCA
- B. Worker's compensation exempt, 39-71-743, MCA
- C. Public assistance exempt, 52-3-607, MCA
- D. Social security exempt under federal law--Section 207, Social Security Act
- E. Nothing concerning health aids exemption
- F. Nothing concerning benefits payable for medical, surgical, or hospital care (except 53-2-607, MCA)
- G. Veteran's benefits exempt under federal law--38 U.S.C. 3101
- H. An award under the Montana Crime Victim Compensation Act exempt, 53-9-129(1), MCA
- I. Nothing concerning burial plot exemption

CURRENT FEDERAL BANKRUPTCY CODE

- A. Burial plot exemption to \$7,500 for debtor or dependent (part of the homestead exemption)
- B. Professionally-prescribed health aids for debtor or dependent exempt with no dollar limitations
- C. Social security, unemployment compensation, public assistance, veteran's benefits exempt
- D. Nothing concerning benefits payable for medical, surgical, or hospital care
- E. An award under a crime victim's reparation law with no dollar limitations

CURRENT MONTANA LAW

- A. Benefits for disability, illness, unemployment exempt; worker's compensation, 39-71-743, MCA; disability insurance, 33-15-513, MCA; unemployment, 39-51-3105, MCA
- B. Nothing concerning the proceeds of insurance, judgment, or settlement as a result of bodily injury
- C. Nothing concerning the proceeds of insurance, judgment, or settlement as a result of wrongful death
- D. Benefits or proceeds paid or payable from life insurance on life of debtor are exempt if the annual premium does not exceed \$500, 25-13-616, MCA; exempt as to beneficiary with no dollar limit, 33-15-511, MCA
- E. If annuitant receives in excess of \$350 per month in annuity, the excess is not exempt, 33-15-514, MCA; proceeds of disability insurance are exempt with no dollar limit, 33-15-513 and 39-71-743, MCA
- F. Stock bonus, pension, profit-sharing not covered
- G. Earnings of debtor for personal services rendered within 45 days of execution are exempt if the earnings are necessary for the support of his/her family, 25-13-614, MCA

CURRENT FEDERAL BANKRUPTCY CODE

- A. Disability, illness, or unemployment benefit exempt
- B. Payment not exceeding \$7,500 for personal bodily injury--not including pain and suffering or compensation for actual monetary loss--is exempt
- C. Proceeds of insurance, judgment, or settlement from wrongful death is exempt to the extent reasonably necessary for support of the debtor and any dependent
- D. Proceeds or benefits paid or payable on the death of the insured if the individual was a dependent of the insured are exempt to the extent reasonably necessary for the support of the debtor and any dependent
- E. Payment under a stock bonus, profit-sharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service is exempt to the extent reasonably necessary for the support of the debtor and any dependent
- F. The Code contains no definition of "property to the extent reasonably necessary for the support of the debtor and any dependent"

CURRENT MONTANA LAW

A. Proceeds of unmatured life insurance contracts are exempt if the annual premiums do not exceed \$500, which protects a debtor who enters into a life insurance contract to build cash surrender value or loan value, 25-13-616, MCA

CURRENT FEDERAL BANKRUPTCY CODE

A. Any unmatured life insurance contract owned by the debtor, other than a credit life contract, is exempt

B. The debtor's aggregate interest, not to exceed \$4,000, in any accrued dividend or interest under, or loan value of, any unmatured life insurance contract owned by the debtor under which the insured is the debtor or dependent of the debtor is exempt

CURRENT MONTANA LAW

A. There is no definition of "dependent" in the general exemption statutes; however, "family" is defined in several sections as a spouse and every person who resides with the debtor under his/her care or maintenance:

1. Minor child
2. Minor grandchild, brother, or sister or minor child of a brother or sister of the debtor or of the spouse
3. Father, mother, grandfather, grandmother of the debtor or spouse or former spouse
4. Unmarried sister, brother, or any other relative of debtor who has attained the age of majority and is unable to care for or support self

B. There is no definition of "value"

CURRENT FEDERAL BANKRUPTCY CODE

A. "Dependent" includes spouse, whether or not actually a dependent

B. "Value" means fair market value as of the date of filing the bankruptcy petition

VISITORS' REGISTER

JUDICIARY

COMMITTEE

BILL NO. 744 (Spaeth); 760 (Nathe)
 767 (Waldron); 779 (Connelly)
~~790 (Ramirez); 803 (Peck);~~
 SPONSOR 834 (Bergene)

DATE February 20, 1985

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Greg Jackson	Helena Museum (old town)	767	
byle Nagel	Simms Mt.	744	
Dennis Hemmer	Helena	744	
Jim Jensen	MT Magistrates Assn.	803	
Jessy M. Kirkland	2842 Festival Road	834	
Jerry Connors	Helena	790	
Dean Douglas	Butte	767	
Dennis Shober	Helena	834	
Kim Keady	Attorney General's Office	779	
MORT McBAIN	BILLINGS	767	
Pat H. Morris	MA CO	767	
Pat Melby	State Bar of Mont.	767	
Pat Melby	State Bar of Mont for Sup Court	760	
Tom Pauliot	DOR / CSEP	834	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.