MINUTES OF THE MEETING
BUSINESS AND LABOR COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

February 21, 1985

The meeting of the Business and Labor Committee was called to order by Chairman Bob Pavlovich on February 21, 1985 at 7:00 a.m. in Room 312-2 of the State Capitol.

ROLL CALL: All members were present.

ACTION ON HOUSE BILL 657: Representative Kadas moved DO PASS on House Bill 657. Representative Driscoll stated that this is unconstitutional per Dennis Lopach of Mountain Bell. Representative Kadas added that a few states allow a request every two years. Representative Kitselman offered a substitute motion that House Bill 657 be TABLED. The motion was then withdrawn. Following discussion, Representative Kitselman offered a substitute motion that House Bill 657 be TABLED. The motion did carry with Representatives Bachini, Brown, Driscoll, Hansen, Howe, Kadas and Pavlovich voting no. House Bill 657 is TABLED.

ACTION ON HOUSE BILL 666: Representative Kadas moved DO PASS on House Bill 666. Representative Glaser stated that the definition of utility covers all small plants, including water and power. Representative Kitselman moved to amend on page 2, line 25 to delete nonresidential. Representative Kadas offered a substitute motion that House Bill 666 be TABLED. The motion did carry by an unanimous vote. House Bill 666 is TABLED.

ACTION ON HOUSE BILL 811: Representative Jones moved DO PASS on House Bill 811. Representative Driscoll explained that amendments to the bill are being worked on. Representative Jones withdrew his motion.

ACTION ON HOUSE BILL 567: Representative Schultz moved DO PASS on House Bill 567 and then moved the amendments that are attached hereto as Exhibit 1. Representative Schultz explained that the amendment is present in approximately 17 other states. Representative Kitselman added that there is not a great deal of difference between what is happening now and what is amendment proposes. The amendment did PASS by unanimous vote. House Bill 567 DO PASS AS AMENDED with all but Representative Nisbet voting yes.

ACTION ON HOUSE BILL 402: Representative Wallin moved that House Bill 402 be taken from the table and reconsidered. A voice vote defeated the motion.

ACTION ON HOUSE BILL 819: John Scully was present to answer any questions the committee may have. Representative Schultz asked why the banks were not present to testify. Mr. Scully explained that they wanted the Minnesota law. Representative Glaser added that a bank should not be allowed to turn over any financial information on a individual. Representative Brandewie stated that financial information is between the bank and yourself. Representative Driscoll explained that you must sign a certified request before the information can be released. Representative Brandewie moved that House Bill 819 be TABLED. A voice vote defeated the motion. Representative Driscoll made a motion that House Bill 819 DO PASS and then moved the amendment that would delete agricultural chemical from the bill. The amendments DO PASS with all but Representative Howe voting yes. House Bill 819 DO PASS AS AMENDED with Representatives Brandewie, Ellerd, Howe, Jones, Glaser, Keller, Kitselman, Schultz and Simon voting no.

HOUSE BILL 597: Hearing commenced on House Bill 597. Representative Ellerd, District #77, sponsor of the bill, stated this exempts all buyers in the ordinary course of business from security interests in the goods purchased and exempts a commission agent or selling agent from liability to the holder of a security interest for goods sold in the ordinary course of business. "Double jeopardy" is the present situation and House Bill 597 will relieve this problem.

Proponent Senator Leo Lane, explained that he has been a livestock dealer for over 30 years. The commission earned is a very small amount when the risk taken is considered. Cattle may be mortgaged without being known, which could result in double payment, added Senator Lane.

Proponent Less Graham, Executive Secretary, Board of Livestock, supplied written testimony which is attached hereto as Exhibit 2.

Proponent Dennis Casey, Associate Manager, Government and Industry Affairs, Livestock Marketing Association, supplied written testimony which is attached hereto as Exhibit 3.

Proponent Robin MacNab, Executive Secretary, Montana Livestock Marketing Association, explained that there are 17 markets that sell 55% of all cattle sold in the state, averaging 991,000 head of cattle sold per year. It was these markets that requested Representative Ellerd to introduce this bill.

Proponent Jim Muller, representing Montana Grain Elevator Association, supplied written testimony which is attached hereto as Exhibit 4.

Proponent Dan Place, representing Broadwater Grain, stated a purchaser cannot afford to pay twice for the product.

Proponent Tom Peterson, Owner/Manager of Shields Valley Grain, stated that you should not pay twice for the same product.

Proponent Jo Brunner, representing Cattlefeeders, presented testimony as shown on the witness statement attached hereto. Ms. Brunner also submitted testimony from the American Meat Institute, Dan Treinen, Merchandising Manager of Montana Operations for Peavey Grain Company's and Richard L. Matteis, Executive Vice President, California Grain and Feed Association which are attached hereto as Exhibit 5.

Opponent John Cadby, representing Montana Bankers' Association, expressed his concern with the availability of credit. If House Bill 597 passes, Senate Bill 129 will be of no value. Senate Bill 129 would provide a computerized network that would provide instant access and knowledge of any liens against farm products by calling the Secretary of State's office. Mr. Cadby suggested Senate Bill 129 should be given a chance to work.

Opponent Elroy Letcher, Executive Secretary, Montana Council of Cooperatives, supplied written testimony which is attached hereto as Exhibit 6.

In closing, Representative Ellerd stated that the bankers are protected currently at the expense of others and they should be responsible. House Bill 597 has the support of the Farmers Union and the American Cattlemen's Association. Senate Bill 129 has not been passed yet, if so, a computer is not perfect and the cost to implement the system will be $250,000, with the opperating cost still unknown. This same type of legislation is sucessful in California, added Representative Ellerd.

Representative Jones asked Mr. Cadby if he has seen the fiscal note on Senate Bill 129. Mr. Cadby explained that there will not be any appropriation from the General Fund. All fees will be imposed on lenders and the fee required for filing a lien will pay for the computer network.

There being no further discussion by proponents or opponents, all were excused by the chairman and the hearing on House Bill 597 was closed.

HOUSE BILL 840: Hearing commenced on House Bill 840. Representative Marian Hanson, District #100, sponsor of the bill stated this requires removing from county records any oil lease that is cancelled or expired by the lessee filing a release.

A fine of up to $100 may be imposed for failure to do so. Representative Hanson suggested an amendment be considered that would increase the fine to $250.

Proponent Senator Ed Smith, Director, Northeast Land and Mineral Association, explained this will help to clear title on oil leases. The releasing provision will work the same as on mortgages.

In closing, Representative Hanson added this will help to clean up the county records.

There being no further discussion by proponents and no opponents to the bill, all were excused by the chairman and the hearing on House Bill 840 was closed.

HOUSE BILL 852: Hearing commenced on House Bill 852. Representative John Harp, District #7, sponsor of the bill, explained this bill revises the definition of "public utility" to provide that the Public Service Commission may decide the definition does not include a person who owns equipment that is leased to a public utility. This will work as a financing tool to expedite the potential sale of Colstrip 4 and work in the purchaser's interest. The position of the Montana Power Company will benefit along with the Colstrip 4 issue. Representative Harp voiced his opposition to any additional language that may be proposed.

Proponent Bob Gannon, Vice President, Montana Power Company, distributed to committee members proposed amendments which are attached hereto as Exhibit 7. House Bill 852 is a means to address the situation of Colstrip 4 and the financing situation. Colstrip 4 must be disposed of and a "leverage lease program" will be considered. A purchaser will buy the plant and then lease back to the Montana Power Company. An investor's interest is for economic reasons solely and not to be regulated or to provide service. This bill will take out any form of regulation, but make the lessee subject to the jurisdiction of the Public Service Commission. The Public Service Commission is not comfortable with the substance of House Bill 852 and therefore will be supporting the bill with proposed amendments. Mr. Gannon explained that his proposed amendments are housekeeping items only.

Proponent Opal Winebrenner, representing the Public Service Commission, supplied written testimony which is attached hereto as Exhibit 8. The commission does support the bill provided their amendments are adopted.

Proponent Jim Paine, representing the Montana Consumer Council, stated House Bill 852 gives the Public Service Commission a needed option. When Colstrip 4 comes into

commercial operation, the problems faced Montana Power Company will be alleviated. If this bill is not passed, Montana Power Company will be faced with problems in negotiating a transaction. Investors are concerned with being treated as a utility and this gives the Public Service Commission this power and option, added Mr. Paine.

In closing, Representative Harp stressed to the committee they support the bill as introduced and not to accept any proposed amendments. The language is clear with a reasonable and fair bill being drafted.

Representative Driscoll asked Opal Winebrenner if the proposed amendments protect the lessee and their effect on the consumer. Ms. Winebrenner explained that the amendments protect the lessor at such time when the board changes and the consumer effect would depend on the leasing arrangements.

Representative Kadas asked Bob Gannon how a "leverage lease program" comes about. Mr. Gannon explained that the cost of Colstrip 4 is 300 billion dollars and through conventional financing Montana Power Company is required to use a 35 year amortization schedule, which creates the ability to lower the cost of the plant. The cost to Montana Power Company is 65 mils and to an investor is 40 mils. A high income entity will purchase from Montana Power Company at their cost, give or take 300 million.

Representative Kadas then asked Bob Gannon what information the Public Service Commission feels is missing. Mr. Gannon stated he does not believe they know exactly what is missing.

Representative Kadas directed the same question to Opal Winebrenner. She explained that the concern is for protection only.

There being no further discussion by proponents or opponents, all were excused by the chairman and the hearing on House Bill 852 was closed.

HOUSE BILL 458: Hearing commenced on House Bill 458. Representative Ray Peck, District #15, sponsor of the bill, stated this allows a credit union or a savings and loan association to maintain a satellite terminal outside its main office at or near a branch office.

Proponent Jeff Kirkland, Vice President, Governmental Relations, Montana Credit Unions League, supplied written testimony which is attached hereto as Exhibit 9.

Opponent John Scully, representing the Montana Independent Bankers' Association, stated this presents a non-bank bank loophole. An automatic teller machine allows cash withdrawal

and inquiry only. Mr. Scully read the present law and explained that it is clear that this can be done under current law.

Representative Peck, in closing, suggested to the committee that House Bill 458 be TABLED.

ACTION ON HOUSE BILL 458: Representative Hansen moved that House Bill 458 be TABLED. Second was received and an unanimous vote TABLED House Bill 458.

HOUSE BILL 853: Hearing commenced on House Bill 853. Representative Krueger, District #69, sponsor of the bill, stated this requires that at least half of the workers on any construction project financed by state money be Montana residents. This will encourage the state to hire Montanas first and is patterned after a United States Supreme Court decision.

Proponent Gene Fenderson, representing Montana Building Construction Trades Council, explained there are problems under the current law, with the highway department, preference cannot be enforced. There are plenty of tradesmen that can be furnished for this work, added Mr. Fenderson.

Proponent Jim Murry, Executive Secretary, Montana State AFL-CIO, stated special attention and concern should be given to those who provide jobs for Montanans. The 50% threshhold allows out of state workers to also be employed. Montana has qualified, experienced persons who should be utilized.

Proponent Louise Kunz, representing the Montana Low Income Coalition, supplied written testimony which is attached hereto as Exhibit 10.

Opponent Jim Beck, Chief Counsel, Montana Department of Highways, explained House Bill 853 conflicts with 6-31-124 that governs federal contracts. The law cannot be enforced without losing the federal aid currently being received. Mr. Beck suggested an amendment to exclude contracts let by the department of highways be considered.

In closing, Representative Krueger explained that the intent was not to include highway construction and an amendment would be appropriate. This bill tells Montana citizens they are cared for and will also send a message to those private employers.

Representative Driscoll stated that on page 1, line 13 it calls for those projects that are funded by state funds. Mr. Beck explained that a portion of their funding is state money.

There being no further discussion by proponents or opponents, all were excused by the chairman and the hearing on House Bill 853 was closed.

HOUSE BILL 855: Hearing commence on House Bill 853. Representative Rod Garcia, District #93, sponsor of the bill, stated this regulates and licenses rolfing, a form of therapeutic exercise. A statement of intent was distributed to committee members, which is attached hereto as Exhibit 11.

Proponent Gary Robinson, a certified rolfer, distributed to committee members Exhibit 12 and 13, which are attached hereto. Mr. Robinson explained this bill will assist rolfers in dealing with insurance companies and will protect those rolfers that are certified from those that are not. In the practicing of rolfing only fingers, hands and elbows are used, no electrical equipment. Most patients have been in a hospital and treated by a medical doctor, but are resistent to typical medical treatment. A letter from Dr. Richard A. Nelson, a neurologist, is attached hereto.

Proponent Wilhelm Steppe, a certified rolfer, explained that he had attended medical school prior to his knowledge of rolfing and made the decision to become a rolfer rather that a medical doctor.

Proponent Dick Larson, a certified rolfer, shared his experience as a patient of a Denver rolfer. Extensive study in anatomy, physiology and massage is needed. A person must appear before a selective committee three times before being certified. Of approximately 1,500 applicants per year, only 40 graduate, added Mr. Larson.

Proponent Karen Anderson, a rolfee and self employed craftsperson, stated rolfing helps to eliminate tension. She feels no strain and back pain, despite her type of occupation, due to rolfing.

Proponent Don Beans, a registered nurse and licensed acupuncturist has undergone 20 sessions of rolfing for chronic thoracic pain which has been corrected.

Bill Palmer, Assistant Administrator, Division of Workers' Compensation, appeared as neither a proponent or opponent. Mr. Palmer stated that on page 12, the reference to 33-22-111, freedom of choice to select practitioners will not require a certified rolfer to be referred.

Opponent Jerry Loendorf, representing the Montana Medical Association, explained that rolfing is a limited technique. A medical doctor would not be allowed to practice rolfing without being licensed or prescribe physical therapy according to the language in the bill.

ADJOURN: The meeting was adjourned at 10:00 a.m. and will reconvene at 12:00 p.m. to continue the hearing on House Bill 855.

The Business and Labor Committee reconvened at 12.00 p.m. The meeting was called to order by chairman Bob Pavlovich, with the hearing on House Bill 855 continued.

Opponent Mary Mistal, Vice President, Montana Chapter of the American Physical Therapy Association, supplied written testimony which is attached hereto as Exhibit 14.

Opponent Judy Olson, representing the Montana Nurses' Association, supplied written testimony which is attached hereto as Exhibit 15.

Opponent Steve Brown, representing Blue Cross, stated that rolfers may be covered under other professions.

In closing, Representative Garcia, stated that the medical association opposes the bill because it will take dollars out of their pockets. The profession will grow and these people should be licensed and regulated.

Representative Brandewie asked Gary Robinson how may rolfers are currently in the state. Mr. Robinson explained that there are three, five that will be entering training, and one in training that will practice in Montana.

There being no further discussion by proponents or opponents, all were excused by the chairman and the hearing on House Bill 855 was closed.

HOUSE BILL 863: Hearing commenced on House Bill 863. Representative Stella Jean Hansen, District #57, sponsor of the bill, stated this requires a manufacturer or supplier of a new water heater to be installed in a residential dwelling to preset the thermostat no higher that 120 degrees fahrenheit. The occupant of a residence may reset the thermostat to a higher reading. This is an energy conservation measure and would be codified under the plumbing code.

Proponent Dennis Lang, Director, Health Services, Missoula County, explained that most burn victims require hospitilization and have a high death rate. A child can turn on water causing burns and child abuse cases are apparent due to hot water. This will prevent tap water burns and protect against accidental burning, stated Mr. Lang.

Proponent Jim Kembel, representing the Department of Administration, supplied written testimony which is attached hereto as Exhibit 16.

Opponent H. S. Hanson, representing the Design Professions, stated legionaire's disease is caused by water temperatures of

105 to 110 degrees. Problems may be present with dishwashers if water heaters are set at 120 degrees. The more people you have in a house, the hotter the water must be, added Mr. Hanson.

Opponent Walt Jakovich, manager of 160 rental units in Butte, stated he knows of no burning accidents in his complex. The 120 degrees will not sterilize dishes or clothing. It is common sense to test the water before you jump in, added Mr. Jakovich.

In closing, Representative Hansen stated there will be no liability for the state created by passage of House Bill 863. The wholesaler or retailer will tag the water heater. The number of persons living in a household is not a valid argument. This bill should be passed for the protection of our children. Representative Hansen submitted a letter from Jennifer Cote, Executive Director, Ponderosa Council of Camp Fire, which is attached hereto as Exhibit 17.

There being no further discussion by proponents or opponents all were excused by the chairman and the hearing on House Bill 863 was closed.

ADJOURN: There being no further business before the committee, the meeting was adjourned at 11:50 p.m.

Rep Bob Pavlovich

Representative Bob Pavlovich
Chairman

DAILY ROLL CALL

BUSINESS AND LABOR COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date Feb. 21, 1985

NAME	PRESENT	ABSENT	EXCUSED
Bob Pavlovich	✓		
Les Kitselman	✓		
Bob Bachini	✓		
Ray Brandewie	✓		
Jan Brown	✓		
Jerry Driscoll	✓		
Robert Ellerd	✓		
William Glaser	✓		
Stella Jean Hansen	✓		
Marjorie Hart	✓		
Ramona Howe	✓		
Tom Jones	✓		
Mike Kadas	✓		
Vernon Keller	✓		
Lloyd McCormich	✓		
Jerry Nisbet	✓		
James Schultz	✓		
Bruce Simon	✓		
Fred Thomas	✓		
Norm Wallin	✓		

Exhibit 1
2/21/85
HB567

Amendments to House Bill 567, Introduced Bill

1) Page 1, line 1 through Page 2, line 4
Strike: Sections 1 and 2 in their entirety

2) Page 2, line 5
Following: line 4
Insert: "Section 1. An insurance company doing business in this state may not declare any life insurance policy or any noncancellable or guaranteed renewable disability insurance policy owned by a resident of this state forfeited or lapsed within 6 months after default in payment of any premium, installment or interest, unless a written or printed notice stating the amount of the premium, installment or interest due on such policy, the place where it must be paid and the name and address of the person or company to which the premium is payable, was addressed and mailed with the required postage affixed, to the policy owner at his last known post office address as shown by the records of the insurance company, on or before the day the premium was due and payable, before the beginning of the period of grace. The notice must also state that unless the premium or other sums are paid to the company or its agent the policy will lapse or be forfeited except as to the nonforfeiture options as may be provided for by any life insurance policy. "Policy owner" as used means the owner of the policy, or other person designated as the person to receive premium notices, all as shown by the records of the insurance company. The affidavit of any responsible officer, clerk or agent of the insurance company authorized to mail the notice that it is the standard practice of the company to address and mail to policy owners the notice required by this section is prima facie evidence that the notice has been duly given. No action may be maintained to recover under a lapsed or forfeited policy on the ground that the insurance company failed to comply with this section, unless the same is instituted within 2 years from the due date upon which default was made in paying the premium, installment or interest for which it is claimed that lapse or forfeiture ensued. This section does not apply to group or group-type policies, to industrial life or industrial disability policies, to any policies upon which premiums are payable monthly or at more frequent intervals or to policies the premiums for which are billed to and payable through an employer."
Renumber: subsequent sections

Exhibit 2
2/21/85
HB 597

MONTANA DEPARTMENT OF LIVESTOCK

Submitted by:
Les Graham

CAPITOL STATION

STATE OF MONTANA

(406) 449-2043

HELENA, MONTANA 59620

February 19, 1985

TO: Representative Bob Ellerd

FROM: Les Graham, Executive Secretary
To the Board of Livestock

RE: H.B. 597

The Board of Livestock and Department of Livestock would like to go on record as supporting H.B. 597.

Our interest in this area comes because of our involvement with lenders and security filings on livestock brands.

We have observed innocent livestock buyers pay the seller for livestock, then, because the seller did not inform the buyer of the lien against the livestock, and the buyer did not place the lienholder on the check, the buyer has had to pay for the livestock twice. Secondly, to the lienholder.

Our feelings are that the borrower and lender are responsible for their own acts, and it should not be the responsibility of a third party to enforce what should be a private matter.

It is only a small percentage of borrowers who will use deceitful practices to avoid paying the lender, and there are many ways this can be done.

We suggest:

a.) That stiffer penalties be enacted to protect lenders from fraud and deceitful practices.

b.) That lenders should do a better job of surveilling their own loans and therefore protecting themselves.

Exhibit 3
2/21/85
HB597
Submitted by: Dennis Casey

STATEMENT OF

DENNIS D. CASEY, ASSOCIATE MANAGER

GOVERNMENT & INDUSTRY AFFAIRS

LIVESTOCK MARKETING ASSOCIATION

KANSAS CITY, MISSOURI

BEFORE THE

BUSINESS & LABOR COMMITTEE

HOUSE OF REPRESENTATIVES

STATE OF MONTANA

H.B. 597

February 21, 1985

Mr. Chairman and members of the Committee:

My name is Dennis Casey; I am an Associate Manager of Livestock Marketing Association; and, I am appearing today at the request of the Montana Livestock Markets Association. I am both proud and pleased to do so.

Livestock Marketing Association is a trade association whose offices are located in Kansas City, Missouri. Although LMA is not a federation; historically, members of the Montana Livestock Markets Association have, in the main, also been members of LMA. That is the case in most other states as well.

Livestock Marketing Association's ties to Montana are long and strong. No less than five Montanans have served as President of LMA. When you consider that Montana businesses make up only about 2 percent of the total membership of LMA and that there have been only 35 Presidents, the esteem in which Montana marketmen are held by the rest of the industry is readily apparent.

We appreciate the opportunity to address H.B. 597--a bill which goes to the core of a severe problem for livestock markets and dealers, as well as buyers of all farm products. Let me emphasize that statement. Although my testimony is directed to selling agencies (auction markets) and buyers (dealers), please understand that the thrust of this bill affects in a positive way all purchasers of farm products including farmers and ranchers; a segment of the agricultural industry which has been pulled into the issue as demand payments have escalated. H.B. 597 contains a simple and practical solution to this problem which is commonly referred to as "double jeopardy", "clear title", or "mortgaged livestock."

The problem arises from the language of the Uniform Commercial Code, which was adopted by 49 states in the 1960s, which states:

> "A buyer in ordinary course of business other than a person buying farm products from a person engaged in farming operations takes free of a security interest created by his seller even though the security interest is perfected and even though the buyer knows of its existence."

The result of this is that all too often, and with increasing frequency in recent years, markets and buyers have had to pay twice for livestock--once at the point of sale, and, once again, to lenders, if sales proceeds were diverted by the seller/borrower.

Exact and comprehensive data as to the seriousness of the situation is not available. Transactions involving livestock number in the millions and include as "buyers"--auction markets, dealers, brokers, packers, farmer feeders, and ranchers. To determine numbers of claims or demands made in those cases where the lender does not receive the proceeds from the borrower is probably impossible. But, there are figures which very clearly indicate the growth of the problem, and they have been developed by a lender--the Farmers Home Administration. In fiscal year 1978, FmHA referred to the Office of General Counsel (for the purpose of collecting from unsuspecting markets or buyers a second time) 105 cases representing $508,130 worth of livestock. In 1982, the comparative numbers were 292 and $4,004,680. In fiscal year 1983, there were 263 claims referred to OGC, with a dollar value of $4,494,950. Similar increases have occurred with grain transactions. We have every reason to believe that demands by banks and PCAs upon third parties have escalated in much the same manner as with FmHA.

Undoubtedly, the serious economic condition of the farm segment of this country has contributed to the problem. The livestock marketing sector is fully aware that the borrower/seller who does not apply sale proceeds to his loan is <u>not</u> a hardened criminal, but is a person whose back is to the wall. That borrower has, at the time of conversion, every intention to right the situation, but circumstances prevent it. Unfortunately, the farm economy is such that the issue will not go away and will continue to plague buyers of farm products.

Now, the question naturally arises, "Do Montana markets/buyers experience the same degree of demands and double payments as the rest of the country?" The answer is, "no." Some years ago, the Montana Legislature recognized the problem and incorporated into the law a notification system that has limits, but does provide a measure of protection to "central livestock markets" selling branded livestock. Until recent years, this Montana statute, in spite of its restrictions, was one of only a very few that addressed the issue. However, in the past three or four years,

many states have considered legislative correction of the UCC in this regard, and some twenty states have acknowledged the unfairness in the original Uniform Commercial Code, and, therefore, have adopted laws aimed at correcting the situation.

To this point in time, California is the only state which has passed "total exemption" by simply striking the wording that refers to buyers of farm products. However, other state legislatures are, at this time, considering legislation similar to H.B. 597, and the California law. It is of prime importance for you to know that in spite of the threat--sometimes raised by lenders--of higher interest rates and/or less availability of money for agricultural loans, it did not happen in California where the law went into effect in 1976. And the reason is easily understood when the term "total exemption", which is commonly applied to California law and bills such as H.B. 597, is examined. The term is inaccurate, for it implies that when H.B. 597 becomes law, it will effectively cut off a lender's security in farm products collateral. That is not so. In order to be a buyer or a selling agent in ordinary course of business, a person would need to enter the transaction in good faith and without knowledge that the sale was in violation of ownership rights. Therefore, lenders could still protect themselves simply by giving potential buyers/selling agents actual notice of the security interest and advising them that unauthorized sales of the collateral would be a violation of the lender's security interest.

Montana agriculture is facing tough economic times that dictate government assistance with a variety of lending practices and policies. The businessmen and businesswomen who operate Montana's livestock markets are accutely aware of those needs. However, to expect those markets to "tail-up" the lender by paying a second time for livestock is absurd. Markets and/or buyers of farm products should not be collection agencies for government or private lenders.

The previous steps taken by the State of Montana in adopting the present system have been noted. That law was, and is, an improvement on the Uniform Commercial Code. Further progress is represented by H.B. 597. Passage of this

bill would remove from the books an unfair and unjust law. After all, the lending of money and the repayment of the loan is a matter between the lender and borrower.

Mr. Chairman, and members of the Committee, thank you for this opportunity to testify on H.B. 597. The Montana markets' willingness to cooperate and assist the Committee cannot be overstated. An inequitable law needs to be changed, and your individual, as well as collective, support is sought in that effort.

Exhibit 4
2/21/85
HB597
Submitted by: Jim Mull

MONTANA GRAIN ELEVATOR ASSOCIATION

Mr. Chairman, members of the committee; My name is James Muller of Rudyard, Montana, and I would like to offer this written testimony on behalf of the Montana Grain Elevator Association as a proponent for House Bill 597.

We as purchasers of grain are legally responsible for leins on agricultural commodities in the State of Montana. As a result, when we issue payment to our customers it becomes necessary to attempt to research every lein the producer may have on his commodity. Needless to say, this task becomes nearly impossible and the inaccuracy of lein searches puts us in the position of playing financial roulette. As the agricultural community has begun to suffer, relative to their farm debt, our concern over leins has escalated dramatically and this condition further complicates our business. Since we do not determine how lenders fincance their customers, it is an extremely bizarre requirement that we must be responsible for repayment of their loans. House Bill 597 places the responsibliity on the back of the institution that profits from financing the farm community and that is only morally right.

Currently the State of California operates under legislation paralell to this bill introduced to you today and business has continued as usual with loans as flexible as ever. It would seem that since California is the largest agricultureal state in the union and they operate without this double jeopardy problem we are exposed to, that surely we could follow suit and pass House Bill 597 to eliminate this unfair business requirement.

AMERICAN MEAT INSTITUTE
Serving The Meat Industry Since 1906

Exhibit 5
2/21/85
HB 597
Submitted by: Jo Brunner

ANALYSIS OF THE FARM PRODUCTS EXCEPTION

UCC - 9-307(1)

PREPARED FOR THE AMERICAN MEAT INSTITUTE

BY
RALPH J. ROHNER
PROFESSOR OF LAW
COLUMBUS SCHOOL OF LAW
CATHOLIC UNIVERSITY OF AMERICA
WASHINGTON, D.C.

NOVEMBER 1983

I. INTRODUCTION

A significant problem facing buyers of farm products -- especially the buyers who are packers or processors of livestock, or marketing agencies, -- is that the commercial law applicable in virtually all states generally allows the lending institution that has financed the producer's operations to pursue the farm products collateral for those loans into the hands of buyers in the ordinary course of business. This means that when a producer sells livestock or other farm products, but does not use the sale proceeds to repay the lender's loan, the lender may sue and recover the value of those goods from the buyer. To safeguard the lender's interest, in other words, the buyer may be forced to pay twice for the same goods.

As a result, this state-law rule frustrates the normal expectations of commercial buyers, and leaves the rights of farm products buyers out of line with the rights of all other marketplace buyers in the ordinary course of business.

This "farm products exception" deserves the Subcommittee's serious attention for a number of reasons:

1. That portion of the Uniform Commercial Code that presently protects the lenders instead of the buyers of farm products, i.e., the "farm products exception," is anomalous within the Uniform Commercial Code itself, and out of step with basic commercial law policies. Ordinary-course buyers of commercial inventory routinely take free and clear of security interests created by their sellers, as do buyers of other types of collateral such as negotiable instruments, securities, warehouse receipts and bills of lading. Only in the case of farm products is the otherwise dominant policy of encouraging the free flow of goods in commerce not maintained.

2. Recognizing the anomalous and capricious effect of the farm products exception, a number of courts and state legislatures have sought to modify its impact in various ways; while sometimes helpful to farm products buyers, these state law efforts are sporadic and inconsistent, and in fact create new legal uncertainties and impose new procedural burdens. These state initiatives, however, do confirm the suspect nature of the "farm products exception" itself.

3. The problem is exacerbated for buyers of livestock, because federal law (the Packers and Stockyards Act, as amended in 1976) requires cash buyers of livestock to pay for their purchases on the spot or within twenty-four hours after the sale transaction. This means that processors, meat packers and other livestock buyers (including producers buying from other producers) must part with their purchase money at a time and under circumstances when it is simply impossible for them to protect themselves against undisclosed security interests. The buyers, in short, are compelled by federal law to be insurers for any lender who is not paid off promptly with the proceeds of the sale.

4. Preemption of state law appears to be the only practicable way to produce a fair and uniform rule for application in the increasingly multistate farm products markets. Uniform state legislation to change the farm products rule is not likely in the forseeable future, if ever. Meanwhile utterly inconsistent special rules are being enacted on a state-by-state basis. Preemption of state law is justifiable not only to achieve uniformity, but also to correct the imbalance created by the federal Packers and Stockyards Act. Such preemption, with respect to the state-law Uniform Commercial Code, would not be unprecedented.

The sections below develop each of these points at greater length. There are also attached to this testimony several appendices which summarize the existing state law (including recent state legislation farm products exclusion), and the court decisions involving claims against buyers of farm products.

II. THE "FARM PRODUCTS EXCEPTION" IS AN ANOMALY IN COMMERCIAL LAW.

A. General policy of buyer protection in the UCC

1. UCC provisions.

The so-called farm products exception derives from the language of section 9-307(1) of the Uniform Commercial Code, which provides:

> A buyer in the ordinary course of business . . .
> other than a person buying farm products from a person engaged in farming operations takes free of a security interest created by his seller even though the security interest is perfected and even though the buyer knows of its existence.

The general thrust of this provision is to insulate ordinary-course purchasers from the claims of prior secured parties, but the underscored language explicitly denies that protection to buyers of farm products.

The isolated nature of the farm products rule is clear on an examination of other UCC provisions. Under UCC 9-306(2) a secured creditor waives its rights in any type of collateral if the creditor has authorized the debtor to sell or dispose of the goods, and such authorization to sell may arise from explicit contract language, "or otherwise." UCC 9-308 and 9-309 confirm that bonafide purchasers of chattel paper, negotiable instruments, securities, warehouse receipts and bills of lading may take free and clear of prior

perfected security interests. Outside of the secured financing context, provisions in Articles 2, 3 and 7 of the UCC create broad bonafide purchaser protections for buyers of goods, negotiable instruments and negotiable documents. See UCC sections 2-403, 3-305, and 7-502.

The farm products rule is therefore clearly an exception to the mainstream commercial policy of permitting buyers to take free of prior claims of ownership or security.

2. The purposes of bonafide purchaser protections

It is important to understand why, as a general policy, the UCC favors purchasers over prior claimants. The reasons are basically ones of fulfilling the expectations of the parties, and implementing good public policy.

a. Goods cannot move smoothly through commercial channels if each buyer must initiate an investigation of the origins of the goods and of his seller's authority to sell. The buyer's usual expectation is that goods offered for sale by a merchant are legitimately in the stream of commerce, and that a purchase transaction -- once completed in the ordinary course of business -- will not be overturned or challenged by earlier secured creditors.

b. Protection of bonafide purchasers is also justified on pragmatic grounds. The secured creditor has presumably investigated the debtor's creditworthiness, integrity and business competence, to determine the level of risk in the transaction. Indeed a lender's business routinely includes calculating and taking those kinds of risks. The lender is therefore in a better position to monitor the debtor's conduct, to police the collateral, and to assure that the proceeds from the debtor's sale of collateral are applied on the debt. Purchasers, on the other hand, are generally not in a position to appraise whether the debtor/seller is properly performing its obligations under financing arrangements with various lenders.

c. The UCC confirms this general policy of protecting buyers in a striking fashion. Once the collateral is sold, UCC 9-306(2) gives the original lender an automatic and continuing security interest in the proceeds of that sale. Thus, when a farmer or rancher sells his crop or livestock, receiving in exchange the buyer's check, note or other payment obligation, that payment obligation becomes subject to the original security interest and may be seized by the lender to satisfy the original debt. This right to proceeds is in a very real sense a trade-off for allowing the buyer to take the actual collateral free of the security interest. But in the case of farm products the effect of these rules is that the lender's security interest continues in both the original collateral and the proceeds. The farm products lender gets two bites at the apple.

B. The "farm products exception" has never had clear theoretical or practical justification.

Against the general UCC policies for protection of buyers, just discussed, the "farm products exception" in UCC 9-307(1) stands as a unique rule that has never been adequately justified.

1. Origins of the farm products exclusion.

Protection for lenders on farm products collateral was the prevailing caselaw rule prior to the official promulgation of the Uniform Commercial Code in the early 1950s. Thus it is not surprising that the draftsmen should adopt that dominant view into UCC 9-307(1).

But what were the underpinnings of this special rule for farm products that the UCC draftsmen adopted? The Official Comments to the UCC say nothing about it. The principal draftsman of Article 9 of the UCC, Professor Grant Gilmore, has said that the the farm products exclusion exists "for reasons

which are never precisely articulated." II G. Gilmore, Security Interests in Personal Property §26.10 (1965). The gist of the pre-UCC caselaw was that somehow the purchaser just did not seem to merit treatment as a bonafide purchaser, at least when evaluated against the desire of the lender to retain its security interest protection.

Perhaps the best explanation is suggested by Professor Gilmore, and it is that a "small country bank holding a small country mortgage" made a more instinctively appealing plaintiff than did large commercial lenders. This makes sense. The court holdings that developed the special farm products rule are largely from the late 1800s and the early decades of this century -- times when the privately-owned, farm-community bank was thought to be indispensable to the area's economic progress and well-being.

It is doubtful that the "small country bank" syndrome offers any persuasive support for the farm products exclusion in the 1980s. Even the smallest banks -- with the assistance of trade associations and federal and state supervisory agencies -- have the capacity to operate sophisticated lending programs. If the farm products rule was originally thought necessary to prevent bank failure and the loss of customer deposits and savings, federal and state deposit insurance programs virtually nullify any such risk. Moreover, with the initiation of government financed or government supported farm credit programs under the aegis of the Department of Agriculture, the federal government itself has become a major financer of farm operations and thus a major beneficiary of the farm products exception. It taxes credulity to justify a preferential rule for large government lending programs on the ground that those programs are essentially "small country banks."

2. Nothing in the nature of farm products financing justifies treatment different from inventory financing.

Distinctive treatment for farm products financers could more easily be justified if that kind of financing were significantly different from financing against inventory or receivables. But it seems impossible to find any substantial or consistent difference in the financing patterns.

-- Financers of both farm products and inventory rely on collateral which is necessarily left in the debtor's possession for growing, processing, feeding, storage, exhibition or manufacture. The lender's risk position is the same in either case.

-- The seasonal nature of some farm products collateral is little different than much seasonal inventory (which may in fact consist of processed farm products).

-- Farm products financers as a group seem to be at no particular disadvantage, when compared to inventory financers, in exercising day to day monitoring or supervision of their debtors' handling of the collateral, and assuring proper application of proceeds. Both types of collateral, and both types of debtors, have elements of unreliability.

-- Financers, debtors and purchasers come in all shapes and sizes, regardless of the type of colllateral. There are small country banks, large farming conglomerates, Mom & Pop purchasers of commercial inventory, large government farm-credit institutions, and so on. There seems no basis for distinctions based on the size of the participants. Purchasers of farm products may be acting as brokers, users or processors; inventory buyers may be similarly categorized.

There is not even a clear and universal distinction between goods that are farm products and goods that are inventory. The same crop or livestock may be classified as farm products in one case but as inventory in another. The farm products exception operates only on collateral which, at the time of sale, is farm products as that term is defined in the Uniform Commercial Code. The definition lists crops, livestock and similar items, but imposes two additional specifications: (1) in the case of products of crops or livestock, they must still be in an "unmanufactured" state, and (2) in all cases, to be farm products, the goods must still be in the possession of a debtor engaged in farming operations. Any goods that fall outside this complex definition become "inventory" and so are not subject to the farm products exclusion. The definition indicates how shadowy is the dividing line between farm products and inventory. For example, one court found that where a rancher left livestock at a commercial feedlot and sold them from there, the livestock were "inventory" rather than farm products. Garden City PCA v. International Cattle Systems, 32 UCC Rep. 1207 (D. Kans. 1981).

The point is that there are no differences of significance between farm products and inventory -- yet purchasers of inventory qualify for bonafide purchaser protection while buyers of farm products do not.

Probably the strongest factor sustaining the farm products exception is simply inertia. The rule was incorporated into the UCC based on older judicial precedents, and has not been changed on the statute books of most states. Over time, of course, a protective rule such as this garners staunch defenders among those who benefit from it. But self-interest based on the status quo is not necessarily fair.

C. Specific ways in which the farm products exclusion is anomalous within the Uniform Commercial Code.

The farm products exclusion is inconsistent with the UCC's general policy of protecting the expectations of ordinary-course buyers, as just described. The odd nature of the farm products rule is shown in a number of specific instances.

1. Normally, when inventory collateral is sold off, the financer's security interest shifts from those inventory items to their proceeds. The farm products financer obtains such an enforceable security interest in the proceeds of sale -- the check, note, or other payment instrument -- which the financer can trace into the debtor's bank account if necessary. But by virtue of the farm products exception, that financer also continues to have an effective interest in the goods themselves, despite their sale. Farm products lenders, in other words, have two forms of security, where other lenders have only one.

2. According to UCC 9-307(1)(c), the farm products financer loses to a buyer in the ordinary course of business if the financer's security interest is left unperfected. Perfection usually involves filing a notice in an office in the county where the debtor resides. Yet, as discussed in more detail in the next section, buyers often find it impossible to verify whether financing statements are on file or not, before finalizing their purchases. Thus the farm products rule may or may not operate in the lender's favor, depending not on any particular knowledge by the buyer, but rather on the technicalities of the lender's own paperwork.

3. As noted above, the farm products rule does not apply if the goods are classified as inventory. Whether a particular farm commodity qualifies for the special rule may then depend on whether the goods have in some sense been "manufactured," or on whether they are still in the "possession" of the

farmer/debtor. These characteristics, which would shift a crop or herd of livestock from farm products to inventory, may be largely fortuitous. In other words, the financer may be unaware of, and have no control over, circumstances that change the character of his collateral and no longer subject it to the farm products exclusion.

4. The only interests that are preserved through the farm products exclusion are formal security interests (virtually always held by professional lenders). Other kinds of prior ownership interests can readily be cut off by bonafide purchaser rules elsewhere in the UCC. For example, suppose a rancher buys cattle from a neighbor in exchange for a check that bounces. If in the meantime the rancher resells those cattle to an innocent purchaser, that purchaser takes free and clear of the neighbor's claim of ownership. UCC 2-403. It is difficult to justify protecting the purchaser against this kind of fraud but not against the rancher's failure to pay the bank. It is equally difficult to explain why the professional lender deserves protection but the neighbor does not.

5. Perhaps the most bizarre effect of the farm products exception is that if the lender's security interest survives the debtor's sale to an immediate buyer, then it survives as to all subsequent purchasers as well. Thus a livestock financer, for example, could sue not only the commission merchant to whom the cattle were sold directly, but also the slaughterhouse that purchased from the commission merchant, and the packing plant, processor or other distributor, that bought from the slaughterhouse. Theoretically, the lender could pursue his collateral all the way to the consumer's dinner table. This is clearly the effect of UCC 9-307(1), even though in those subsequent sales the goods are

conventional inventory and no longer farm products. (In sales of inventory, the buyer takes free of security interests created by his immediate seller, but not free of earlier liens). The farm products exception, in other words, frustrates the expectations not only of the first buyer but all buyers in the chain of distribution.

III. STATE-LAW DISAGREEMENT WITH THE FARM PRODUCTS EXCLUSION.

Beyond the analytical weaknesses in the farm products exclusion, there has been substantial disenchantment expressed about it by courts, state legislatures, and UCC draftsmen.

A. Court holdings

Although protection for the farm products lender probably remains the majority rule based on UCC 9-307(1), a number of courts have found openings in the UCC through which the effects of that provision can be avoided.

The most common ground for judicial decisions in favor of the purchaser is that the lender somehow "authorized" the sale, thus relinquishing any continuing security interest in the farm products once they are sold. This notion derives from language in UCC 9-306(2), and the courts have read it as qualifying the farm products rule in 9-307(1). Typically, farm products lenders will specify in their loan agreements with producers that collateral is not to be sold without the lender's permission and without accounting for proceeds. Those courts which have found in favor of buyers have emphasized that despite such contract language a "course of dealing" had developed between the lender and borrower in which the lender acquiesced in sales made without express permission.

Not all courts have agreed on the applicability of this "waiver" theory. Some, intent on protecting the lender's interest, find either that the lender never gave any implied authorization to sell, or that the express terms of the

contract control over the parties' conduct. The minority line of cases recognizes the importance of the actual conduct of lenders, debtors and buyers, rather than simply relying on the literal language of the farm products exception in the UCC. The waiver or "authorization" cases thus show that judges will sometimes be creative, and will not apply the farm products rule unthinkingly in situations where it produces unfair results. Professor Barkley Clark, in his treatise on Secured Transactions Under the UCC, has recently noted that these cases "continue the swing of the pendulum in favor of bonafide purchasers in this area." These expressions of judicial conscience, however, are limited in number, and offer no long-term solution if the rights of the parties must be litigated in every case.

As noted earlier, other courts have found that the farm products financer may not recover from the purchaser for other reasons: either the lender's security interest was unperfected (as by an inadequate description of the collateral), or because the goods were no longer in the possession of a farmer and thus were "inventory" rather than farm products.

Together these cases confirm that the farm products exclusion is neither blindly applied nor universally approved in the courts.

B. A number of state legislatures have enacted statutes to ease the burden of the farm products exception on buyers.

Most of the security interest provisions of Article 9 of the Uniform Commercial Code have been enacted and retained in the form in which the draftsmen promulgated them. But the farm products exception has been the subject of direct or indirect modification in at least sixteen states. Most of these modifications have as their purpose to reduce the risk that farm products buyers may have to pay twice for the same goods, and thus to avoid the discriminatory effect of the farm products exception.

This state legislation is listed and summarized in an attachment to this testimony. The state laws fall into several distinct categories:

1. One state has repealed the farm products exception outright, leaving farm products collateral subject to the same rule as other inventory: i.e., ordinary-course buyers take free and clear of the lender's security interest. It is noteworthy that the state that flatly rejects the farm products rule is California, the nation's largest producer of agricultural commodities. Bills to repeal the farm products exception have been introduced in nine state legislatures in the past two years.

2. Another type of state law provision subjects the debtor to criminal prosecution if the debtor engages in misconduct such as selling collateral without accounting for the proceeds, or selling collateral to buyers not previously listed with the seller. The purpose of these criminal sanctions is to encourage the farm products producer to disclose the lender's involvement to the purchaser. The safe step for the purchaser is then to issue its payment check jointly to the seller and the lender, thus assuring that the lender realizes those proceeds.

3. Perhaps the most frequently used mechanism in these variant state laws is to require that the secured lender give specific notice of its lien to prospective purchasers in advance of sale, as a condition to the continuing validity of the lien against those purchasers. Here too the theory is that, with such notice, the purchaser will take steps to assure that the payment proceeds go to retire the seller's indebtedness to the lender.

4. A related technique in some states is to require the buyer to obtain from the seller a certificate which identifies any outstanding security interests. The buyer must then make payment jointly to the seller and lienholder. Unless the buyer receives such a certificate, and makes payment accordingly, buyer is subject to the lien.

5. A number of states in recent years have changed from county filing to central state filing for security interests in farm products. This limits the number of offices in which records must be checked to verify outstanding security interests, but those offices may still be hundreds of miles away from the point of sale, or in other states altogether.

6. Several states have shortened the statute of limitations applicable to the lender's action over against the purchaser. This reduces the contingent nature of the purchaser's liability to the lender, and may induce the lender to monitor the debtor/seller a bit more closely. But it does nothing to relieve buyers of the basic risk imposed by the farm products exception.

Together these state enactments suggest a growing concern in the state legislatures about the fairness of the farm products rule in UCC 9-307(1). Each of these approaches seeks to alleviate some of the risk for a purchaser who innocently buys farm products without immediately seeing to it that outstanding liens are satisfied. But together they represent only scattered and uneven responses to the problem. For example, a buyer located in one of these states would still be subject to the full force of the farm products exception if it purchased goods at sites outside that state.

C. The Article 9 Review Committee recommendations.

In the light of the more recent state legislative activity just described, it is worth noting that in 1970-71 there was a serious proposal to delete the farm products exception from the official Uniform Commercial Code. At that time the Permanent Editorial Board of the UCC had appointed a Review Committee to draft revisions of Article 9 of the Code. In a preliminary report, the Review Committee recommended that the farm products exception be eliminated,

but in its Final Report in 1971 the Review Committee waffled. Noting the pre-Code origins of the rule, the Committee "questioned whether the pre-Code practice is still sound under modern conditions," but doubted that the states would ever agree on a uniform policy. The Committee therefore softened its recommendation to an "optional" one.

The Permanent Editorial Board deleted the Committee's optional recommmendation, for reasons that are unexplained. In context, it is likely that the PEB simply wanted to avoid making such a schizophrenic optional recommendation on a point that was so controversial in the states. The PEB may also have been deferring to the desires of the federal government, whose farm credit agencies were frequently the lenders insisting on preservation of their security interests against purchasers.

IV. THE PARTICULAR DILEMMAS FOR LIVESTOCK PURCHASERS

The effect of the farm products exception is to force the purchasers of farm products to become either collecting agents on behalf of the lender, or guarantors of the debtor's honesty, or both. Purchasers, however, are in no position and have no skill or means to perform either function, and there seems little reason why they <u>should</u> have those responsibilities.

A. <u>The impossibility of verifying farm products liens</u>

Commercial sales of farm products commonly take place through a variety of market forums -- i.e., through auctioneers, commission merchants, stockyards, warehouses, feed lots, buying stations, sale yards, terminal markets, and the like. Sale locations have tended to shift from large terminal markets to points closer to the farmer's or rancher's operations. Deals are negotiated, struck and consummated quickly, in a setting where complete and reliable information about the seller's outstanding loans and security interests on particular lots of goods may not be immediately at hand.

In this setting, the buyer concerned about protection from possible future claims by the seller's financing institution has some very limited options. The buyer may ask the seller about the existence of liens and the identity of the lienholder. If such information is provided, the purchaser may issue checks payable jointly to the seller and the lienholder, or may seek lien waivers from the lender. But the seller may be unreachable (for example if goods are being handled through brokers or agents); or a seller engaged in widespread farming or ranching operations may not have available the details of financing arrangements covering those specific goods; or the seller may simply misrepresent the true facts. This latter possibility is likely in cases where the seller intends to divert the proceeds, and it is in just these cases that the unpaid lender will later seek a second payment from the purchaser.

Alternatively, and theoretically, the purchaser may check the filed financing statements required of secured creditors under Article 9 of the UCC. Such financing statements, indexed in the name of the debtor, identify the lienholder and contain at least a summary description of the covered collateral. The very purpose of the UCC filings is to alert third parties about outstanding secured claims.

Ironically, however, the UCC filing system that is designed to prevent misrepresentation and secret liens is largely useless for that purpose in the farm products setting.

With filings generally located in the county of debtor's residence or where the crops are grown, the purchaser needs to ascertain the seller's name and the appropriate location. That seemingly simply information may be quite elusive, for sellers operate as sole proprietorships, partnerships,

corporations (with subsidiaries and operating divisions), and through syndications; and they may operate as several different commercial entities simultaneously. The county, even the state, of "residence," or of crop location, may be problematic for widespread production enterprises. Even if a financing statement is found, it may reflect only a general description of collateral -- such as "1983 wheat crop," or "beef cattle" -- without further specification.

Not only is the public record information difficult to find and often imprecise, but distance and time constraints make the problem more acute. Buyers must often settle for purchases on the day of sale or shortly thereafter, while lien information is located in offices that are usually open only during normal business hours. Moreover, those filing offices are likely to be many miles away, or even in different states.

As a practical matter, therefore, farm products purchasers are often powerless to verify and respond to the risk of an undisclosed security interest. Yet the effect of the farm products exception is to force those purchasers to guarantee that payment by them will actually reach the (undisclosed) lienholder.

B. Effect of the "prompt payment" rule of the Packers & Stockyards Act.

Purchasers of livestock (as distinct from other farm products) face a special problem that increases their dilemma. By virtue of Section 409 of the Packers and Stockyards Act, 7 U.S.C.A. § 228b, cash purchasers of livestock must settle for their purchases by check or wire transfer before the end of the next business day after the purchase is made. That is, federal law requires final payment for the livestock within a time frame that is so short

that it becomes virtually impossible to make inquiries of and receive responses from UCC filing offices that may be scattered through numerous states and counties. The purchased livestock itself is held "in trust" for the sellers until those payment checks clear.

This federal "prompt payment" rule was strengthened by statute in 1976, as part of an effort to protect livestock producers from the risk of non-payment. This had happened following the bankruptcy of several large meat packers whose checks for livestock purchases were then dishonored. Properly administered, the PSA prompt payment provision may serve a useful purpose, but its causal relationship to the problems arising from the farm products exception is clear. On the one hand federal law forces livestock buyers to pay promptly to the seller; on the other hand the farm products rule of the UCC forces them to pay again to the seller's financer if the seller misappropriates the original payment. This seems a classic Catch-22 pattern.

There is an irony here as well. The prompt payment rule in section 409 of the Packers and Stockyards Act was created to deal with problems flowing from the collapse of meat packing and processing companies. The indirect effect of the PSA provision is to increase the risk that those packers and processors will have to pay twice for some livestock; this kind of risk can only contribute to the possibility of more meat packer failures.

V. PREEMPTION OF STATE LAW WITH RESPECT TO THE FARM PRODUCT EXCEPTION SEEMS JUSTIFIED, AND IS NOT UNPRECEDENTED.

A. Preemption is justified to deal with a problem of national scope where state law solutions are inadequate or uneven.

Present agricultural markets generally have relatively fewer (but larger) purchasers of agricultural products for processing and resale than in the past. This tends to blur state lines and create more national (or at least

regional) markets for farm products. Differences in the state law applicable to farm products sales become obstacles to the smooth operation of those national and regional markets, and at such a point federal intervention and preemption may become necessary.

Just such a situation is occuring with respect to the farm products exception. What was once a uniform state rule protecting the farm products lender is now being whittled away by numbers of state statutes and court opinions. Courts in some states continue to apply the farm products exception literally, while courts in other states are inclined to find that the lender has waived the lien by "authorizing" sales of the collateral.

A quarter of the states have acted legislatively to mitigate the farm products exception, imposing various requirements to help assure that farm products purchasers are not unduly burdened. But these approaches are inconsistent from state to state, and that inconsistency undercuts any utility those state innovations may have. Corrective action by one state does not even help its own residents when they purchase farm products elsewhere.

There is no realistic prospect that the Uniform Commercial Code will be amended to adjust the farm products exception at the state level. There are currently no plans for revising Article 9 of the UCC in this regard. Even if an official or "optional" amendment were recommended by the Permanent Editorial Board and the other UCC sponsors, there is little likelihood it would be adopted in uniform fashion throughout the country.

With respect to the Farmers Home Administration and other federal farm creditors, there is an especial reason why a federal statutory rule on bonafide purchaser rights is appropriate. Because of the federal government's interest in those lending programs, the courts have long agreed that the

government's rights as a creditor are not controlled absolutely by state law and may be determined by courts as a matter of federal "common law." But in its decision in United States v. Kimbell Foods, Inc., 440 U.S. 715 (1979), the Supreme Court ruled that governmental entities such as the Small Business Administration and the Farmers Home Administration would be bound, as a matter of federal common law, by non-discriminatory state law of general applicability. The effect is that the rights of the FmHA and similiar lenders are controlled by the Uniform Commercial Code. To the extent those rules begin to vary from state to state with divergent interpretations of the UCC, or with additional state statutory conditions, there is further justification for a standard, nationwide rule.

B. <u>There is an overriding justification for preemption in the case of buyers of livestock</u>.

Beyond the reasons just mentioned for federal preemption of the farm products rule, there is an additional consideration affecting buyers of livestock. This is the fact that part of the problem for livestock buyers is <u>caused</u> by federal law. The "prompt payment" provision in Section 409 of the Packers and Stockyards Act turns the screws several notches tighter for livestock purchasers, who must pay their sellers immediately, usually without opportunity to verify pre-existing liens. This federal provision, intended to cure one difficulty, in fact created a new one.

Congress should acknowledge that its handiwork in 1976 has compounded the problem of livestock purchasers. A preemptive federal law abolishing the farm products exception would be the most appropriate response.

C. <u>Preemption in this context has ample precedent</u>.

If Congress were to preempt the farm products exception in the UCC, it would hardly be the first time federal law has displaced portions of the Uniform Commercial Code.

The most obvious precedent is in Section 410 of the Packers and Stockyards Act, 7 U.S.C.A. § 228c, which specifically preempts state laws dealing with the bonding of packers and with prompt payment by packers for livestock purchases. The "trust" provision of the same federal law, Packers and Stockyards Act § 206, effectively displaces those UCC provisions which some courts had held to deny sellers the right to reclaim the goods if the buyer's checks were dishonored.

Outside of the farm products area, there are numerous examples of federal laws that supersede portions of the Uniform Commercial Code. For example, security interests in ships, aircraft, and railroad rolling stock are subject to federal statutes with respect to perfection and priorities. The Federal Bills of Lading Act controls over Article 7 of the UCC for interstate carriers. Portions of the Magnuson-Moss Warranty Act limit the operation of rules in Article 2 of the UCC. The Federal Reserve Board's Regulation J applies to check collections through the Federal Reserve system, notwithstanding UCC Articles 3 and 4.

The list could be extended. The point is that Congress has not hesitated to act and to preempt even such deep-rooted state law as the UCC when there is justification for doing so.

D. Preemption of the farm products exception should not unduly disrupt farm credit operations.

If Congress were to abolish the farm products exception by federal statute, the immediate consequence is that farm products financers would no longer be able to throw off onto innocent purchasers the risk of loss when the producer fails to apply the sale proceeds on the debt. This, we submit, is

just what the law should provide, in the interests of fairness and to prevent continuing discrimination against purchasers of farm products. Whether such a reallocation of risk would have any disruptive effect on the operations of farm lenders and producers is necessarily a matter of speculation.

A number of factors suggest that the impact of a preemptive federal law would be minimal. For one thing, some farm products financers bear those risks already: there is no farm products exception in California, and court holdings in other states deny its use to lenders who have authorized the sale of collateral. Presumably some lenders, though legally entitled to pursue the purchaser, do not do so for reasons of expediency (distance, likelihood of recovery, litigation expenses, etc.). So the amount of new risk is unclear.

For another, preemption of the farm products rule would not mean that purchasers could never be accountable. The buyer would still have to qualify as a "purchaser in the ordinary course of business." The buyer would have to be acting in good faith and without knowledge that the particular sale was unauthorized. These criteria would permit the lender to recover from any buyer who was a knowing participant in an unauthorized sale.

A reallocation of risk from buyers to lenders is also justifiable if the net amount of losses would be reduced, or if those losses could be absorbed more efficiently by lenders than purchasers. A case can be made for each of these suppositions. Losses from unauthorized sales and unaccounted-for proceeds now fall indiscriminately on buyers. That is, the loss occurs after the sale when a particular producer fails to pay off the secured loan with the sale proceeds. Buyers are powerless to predict in advance the transactions that will cause losses, and powerless to control the debtor/seller's use of

the proceeds once the sale had been finalized. Lenders, on the other hand, generally maintain continuing relationships with their debtors, through which they can periodically check the status of the collateral or demand prompt accounting for collateral that has been sold. It is likely that lenders confronted with a new measure of risk of non-payment will minimize that risk through inexpensive, routinized policing techniques.

Further, lenders are inherently better positioned to absorb and distribute the resulting losses. For example, lenders can reflect actuarial projections of unauthorized-sale losses in their rate and fee structures for distribution among all borrowers. Or insurance against that specific form of risk may be feasible. Under the present law, by contrast, the losses fall fortuitously and randomly on purchasers of different sorts who as a group are much less likely to be able to absorb or distribute the losses through their customer base.

With a clearly preemptive federal rule, financers and producers would be spared the burden and expense of complying with the various recent state laws that impose extensive disclosure or certification duties on them.

Some may argue that at least a marginal increase in the cost of farm credit is inevitable if the farm products exception is preempted by federal law. This Subcommittee could usefully inquire into just that possibility. We doubt, however, that this Subcommittee or the Congress would find any measurable interference with farm products financing.

VI. CONCLUSION

In summary, the so-called farm products exception as it now exists in UCC 9-307(1) is anomalous and inequitable. It casts a risk of loss on innocent purchasers that the UCC generally would impose on the lender as a cost of its business. It has the effect of making farm products buyers unwitting guarantors of the seller's honesty, while the buyers are powerless to protect themselves against that exposure. The farm-products exception is fragmenting in the courts and in state legislatures, in a way that makes uniform, preemptive federal law appropriate. Federal preemption is particularly fitting in the case of livestock purchasers because the federal Packers and Stockyards Act contributes to their dilemma. Finally, there is no basis to believe that a reallocation of this risk would seriously disrupt farm credit activities.

We appreciate the opportunity to present these views, and encourage the Subscommittee to take steps to solve this farm products problem. We note the two bills pending on this matter, H.R. 3296 and H.R. 3297, and hope the Subcommittee will pursue them.

APPENDIX A

The following are representative court cases which have dealt with the issue of a buyer of farm products in the ordinary course of business. Most resolutions have depended upon whether the sale was authorized. If the sale was authorized, the security interest ends in the collateral; if the sale was not authorized, the security interest continues. The first two lists are cases that have been decided in this way. A third list presents cases which have found various other ways to resolve the problem.

I. Unauthorized Sale/Security Interest Continues:

1) In re San Juan Packers, Inc., 696 F2d 707 (9th Cir. 1983) (Sale of farmer's vegetable crop to a food processor was unauthorized. The perfected security interest in this crop had priority over a perfected interest in the food processor's inventory.)

2) In re Sunriver Farms, Inc., 27 Bankr. 655 (D. Ore. 1982) (The buyer entered a purchasing agreement to buy the farmer's bean crop. Later the farmer created a security interest in this crop. Since delivery had not been made to the buyer, title had not yet passed. The secured party had priority over the buyer. The subsequent completion of the sale was unauthorized since the security agreement required any purchases to be made by check to both the farmer and the secured party, and this was not done.)

3) Cox v. BancOklahoma Agri-Service Corp.,641 SW2d 400(Tex. Ct. App. 1982) (The debtor was in the business of buying, fattening, and selling cattle. The secured party knew of this business and did not protest the sales. After the court found

the cattle to be farm products rather than inventory, it determined that this course of dealing did not authorize the sale to the buyer since the buyer was without knowledge of these prior dealings.)

4) United States v. Chesley's Sales, Inc., 523 F. Supp. 528 (W.D. Pa. 1981)(The sale of three cows by an auction firm was unauthorized since the security agreement required written consent and none was given.)

5) United States v. Riceland Foods, Inc., 504 F. Supp. 1258 (E.D. Ark. 1981)An FmHA "borrowers list" omitted the debtor's name, but the buyer's reliance on this list did not authorize the sale.)

6) Benson County Cooperative Credit Union v. Central Livestock Assn., Inc., 300 NW 2d 236 (N.D. 1980) (Remanded to determine if sale was authorized as a question of fact.)

7) Fisher v. First National Bank of Memphis, 584 SW2d 515 (Tex. Civ. App. 1979)(The secured party did not authorize a sale of cattle since a course of dealing will not control over an express provision in the security agreement against sales.)

8) Southwest Washington Production Credit Assn. v. Seattle First National Bank, 92 Wn2d 30, 593 P2d 167 (Wash. 1979)(Sale of farmer's crop was unauthorized although there was a course of dealing over a period of years permitting sales without requiring written consent. The secured party had only consented to the sale on condition that he receive payment. Since he did not receive payment, the condition was not met and the sale unauthorized.)

9) Oxford Production Credit Assn. v. Dye, 368 So2d 241 (Miss. 1979) (Sale of farmer's cotton crop was unauthorized since the security agreement required written consent and no written consent was given.)

10) Mammoth Cave Production Credit Assn. v. Oldham 569 SW2d 833 (Tenn. Ct. App. 1977) (Remanded to determine if sale was authorized as a question of fact.)

11) United States v. Smith, 22 UCC Rep 502 (N.D. Miss. 1977) (FmHA's security interest in a farmer's crops can not be waived by any informal consent or waiver provision from the FmHA's county supervisor since any implied consent would exceed his authority.)

12) Production Credit Assn. v. Columbus Mills, 22 UCC Rep. 228 (Wis. Cir. Ct. 1977) (Unauthorized sale of farmer's corn crop.)

13) Wabasso State Bank v. Caldwell Packing Co. & Robel Beef Packers, 251 NW2d 321 (Minn. 1976) (The sale of cattle was unauthorized since the security agreement contained an express provision against sales.)

14) United States v. Topeka Livestock Auction, Inc., 392 F. Supp. 944 (N.D.Ind. 1975) (Auctioneer was held liable for conversion of a farmer's livestock since the FmHa did not authorize the sale.)

15) Colorado Bank & Trust Co. v. Western Slope Investments Inc., 539 P2d 501 (Colo. App. 1975) (A course of dealing could not operate to authorize a sale of cattle where a security agreement required written consent.)

16) Baker Production Credit Assn. v. Long Creek Meat Co., Inc., 513 P2d 1129 (Ore. 1973) (Sale of cattle was unauthorized, although the secured party consented to the sale, since a condition of sale was that a draft be made payable to the secured party, honored, and paid and this condition was not met.)

17) Farmers State Bank v. Edison Non-Stock Coop. Assn., 190 Neb. 789, 212 NW2d 625 (1973) (where a financing statement permitted the debtor-farmer to sell farm products in the regular course of business unless he was in default, the sale of cotton was unauthorized when the debtor was in default.)

18) First National Bank of Atoka v. Calvin Pickle Co.,11 UCC Rep. 1245 (Okla. App. 1973) rev'd on other grounds, 516 P2d 265 (Okla. 1973) (Although the secured party permitted the farmer to sell crops and remit the proceeds, the sale of crops to the defendant was unauthorized since the security agreement required written consent.)

19) United States v. Hughes, 340 F. Supp. 539 (N.D. Miss. 1972)(The FmHA's security interest in a farmer's soybean crop continued despite the county supervisor's actions to permit debtors to market their grain.)

20) United States v. E.W. Savage & Son, Inc., 343 F. Supp. 123 (D.S.D. 1972), aff'd 475 F2d 305 (8th Cir. 1973)(The FmHA held a commission agent liable in conversion for the sale of cattle. The express prohibition against sales in the security agreement can not be overcome by a course of dealing or otherwise.)

21) United States v. Pete Brown Enterprises, Inc., 328 F. Supp. 600 (N.D. Miss. 1971) (Purchaser of chickens was liable in conversion to the secured party.)

22) Garden City Production Credit Assn. v. Lannan, 186 Neb. 668, 186 NW2d 99 (1971) (A course of dealing between the secured party and the debtor, by which the secured party had not objected to the A-5 rancher's prior sales of cattle and had accepted the proceeds did not operate as a waiver when the buyer did not know of the course of dealing and the security agreement required a written waiver.)

23) United States v. Basing, 7 UCC Rep. 1120 (E.D. Ill. 1970)(The FmHA held the operator of a grain mill liable for conversion of crops in which it held a security interest when the security agreement required written consent prior to the farmer's sale.)

24) Overland National Bank of Grand Island v. Aurora Cooperative Elevator Co., 184 Neb. 843 (1969) (Unauthorized sale of a farmer's milo crop.)

25) United States v. McCleskey Mills, Inc., 409 F2d 1216 (5th Cir. 1969) (The United States' security interest in a farmer's present crop continued despite its sale since the sale was unauthorized.)

26) Vermillion County Production Credit Assn. v. Izzard, 249 NE2d 352 (Ill. App. 1969)(The reference to proceeds in the security agreement and financing statement was insufficient to authorize as sale.)

27) Duvall-Wheeler Livestock Barn v. United States, 415 F2d 226 (5th Cir. 1969)(An auctioneer was liable in conversion for selling livestock subject to a security interest. This interest was not waived since the security agreement required written consent, which was not given, and there was no course of dealing to the contrary.)

28) United States v. Greenwich Mill & Elevator Co., 291 F. Supp. 609 (N.D. Ohio 1968) (The FmHA's security interest continued in a farmer's crops despite its agent's statements to the buyer concerning the crop's disposition.)

II. Authorized Sale/Security Interest Ends:

1) National Livestock Credit Corp. v. Schultz, 653 P2d 1243 (Okla. App. 1928)(The sale of cattle was authorized, despite a provision in the security agreement requiring joint payment to the seller and secured party, since the secured party and the industry had established a course of dealing otherwise.)

2) First National Bank & Trust Co. of Oklahoma City v. Iowa Beef Processors, 625 F2d 764 (10th Cir. 1980) (The secured party had given its consent to the debtor to sell cattle and for payment to be made directly to the debtor. Its conditioning that the debtor submit the proceeds to the secured party did not condition its consent to the sale to the buyer since the buyer had no control over the payment once it was in the debtor's hands.)

3) Benson County Cooperative Credit Union v. Central Livestock Assn., Inc., 300 NW2d 236 (N.D. 1980)(Remanded to determine if sale was authorized as a question of fact.)

4) United States v. Lindsey, 455 F. Supp. 449 (N.D. Tex. 1978) (Although authorization could not be implied by acts of FmHA agents, express authorization had been given to the dairy farmer to sell "cull" cows for slaughter without obtaining prior consent.)

5) North Central Kansas Production Credit Assn. v. Washington Sales Co., 577 P2d 35 (Kan. 1978)(The expressed consent of an officer of the PCA, assuring the debtor that he could sell the cattle without prior written consent so long as the proceeds were applied to the loan, authorized the cattle's sale.)

6) Mammoth Cave Production Credit Ass'n v. Oldham, 569 SW2d 833 (Tenn. App. 1977) cert. denied by Tenn. S. Ct. (1977) (Remanded to determine if sale was authorized as a question of fact.)

7) Hedrick Savings Bank v. Myers, 229 NW2d 252 (Iowa, 1975) (The secured party's course of dealing, allowing sales of livestock on prior occasions and accepting checks from such sales, authorized this sale despite a prohibition in the security agreement.)

8) Planters Production Credit Ass'n v. Bowles, 256 Ark. 1063, 511 S.W. 2d 645 (1974) (Secured creditor authorized sales through course of dealing.)

9) Lisbon Bank & Trust Co. v. Murray, 12 UCC Rep. 356 (Iowa 1973) (The sale of cattle to the buyer was authorized through a course of dealing between the secured party and debtor since the security agreement did not require written consent.)

10) United States v. Central Livestock Assn., Inc., 349 F. Supp. 1033 (D.N.D. 1972) (The sale of cattle was authorized by the FmHA by giving day-to-day permission to the debtor to sell and relying upon him to remit the proceeds. This was the resolution even though the security agreement required written consent.)

11) In re Cadwell, Martin Meat Co., 10 UCC Rep. 710 (E.D. Cal. 1970) (The course of dealing between the secured party and the debtor and the filing of a financial statement covering "proceeds" operated to authorize the sale to the buyer despite a requirement in the security agreement of written consent.)

12) Swift & Co. v. Jamestown National Bank, 426 F2d 1099 (8th Cir. 1970) (A cattle buyer in the business of buying, feeding, and selling cattle was authorized to make sales in his ordinary couse of business by the terms of the security agreement.)

13) Clovis National Bank v. Thomas 425 P2d 726 (N.M. 1967) (Secured party, by permitting the debtor to sell his cattle from time to time as the debtor chose, waived his right to require written authority prior to a sale as provided in the security agreement.)

III. Other Resolutions:

1) Farmers State Bank v. Webel, 113 Ill. App. 3d 87, 446 NE2d 525 (Ill. App. 1983)(opinion modified on rehearing) (Pigs were inventory, not farm products, in the hands of one who bought and sold them, only fattening the pigs while they remained unsold.)

2) Garden City Production Credit Assn. v. International Cattle Systems, 32 UCC Rep. 1207 (D. Kans. 1981) (The buyer took free of the secured party's security interest because the cattle were inventory for a feed-lot operation. Nor were the cattle in the possession of the debtor.)

3) Weisbart & Co. v. First National Bank of Delhart, Texas, 568 F2d 391 (5th Cir. 1978)(The secured party exercised its security interest and foreclosed prior to the completion of a sale.)

4) First National Bank of Atoka v. Calvin Pickle Co., 516 P2d 265 (Okla 1973) (The financing statement failed to describe the land upon which the crops were planted with the specificity required to perfect the secured party's security interest.)

5) United States v. Hext, 444 F2d 804 (5th Cir. 1971) (Since the debtor was both a cotton farmer and the owner of a gin mill, a purchase from the gin mill was a purchase from the debtor but not from one engaged in farm operations.)

6) Bank of Madison v. Tri-County Livestock Auction Co., 9 UCC Rep. 53 (Ga. App. 1971) (The debtor's return of cattle to the seller after being unable to pay for them did not constitute a sale, so the secured party's security interest in the debtor's afteracquired cattle had priority.)

7) Swift & Co. v. Jamestown National Bank, 426 F2d 1099 (8th Cir. 1970) (The secured party's security interest was unperfected because the financing statement was filed in the wrong place.)

APPENDIX B

Sixteen states have enacted legislation that affects the "farm products exception" in Section 9-307(1) of the Uniform Commercial Code. Those states and the nature of their legislation are as follows.

1) Arkansas: [§85-9-306(1)] A security interest in farm products will not be waived through any course of dealing or trade usage.

2) California: [Cal. Commercial Code §9-307(1)] The exception has been deleted, giving the ordinary course buyer of farm products the same protection given to any other buyer in the ordinary course of business.

3) Delaware: [Del. Code, Tit. 6,§ 9-307(1)] Creates a registry for grain buyers and affords any registered grain buyer the same protection as any other buyer in the ordinary course of business unless they are notified prior to the sale by the secured party.

4) Georgia: [Ga. Code, Tit. 109A § 9-307(3)] A commission merchant who sells farm products will not be held liable to the secured party.

5) Illinois: [Del. Rev. Stat., Ch. 26, §§ 9-205, 9-306, 9-307] Requires disclosure to the secured creditor of anyone to whom debtor might wish to sell his farm products and penalties for selling to someone else. The buyer takes free of any security interest in the farm products unless given written notice of the security interest by the secured party within five years prior to the sale. Similar protection is given to a commission merchant.

6) Indiana: [Ind. Code § 26-1-9-307] The debtor must disclose to the secured party those buyers to whom he wishes to sell his farm products. The secured party must give prior written notice to the buyer within eighteen months before a sale. The buyer who receives prior written notice must pay for the farm products by issuing a check jointly to the debtor and the secured party.

7) Kansas: [Kan. Stat. Ann., ch. 84, § 9-307(1)] Affords the buyer of milk, cream, and/or eggs the same protection as most buyers in the ordinary course of business.

8) Kentucky: [Den. Rev. Stat., ch. 355, § 9-307] Duly licensed tobacco warehouses, grain storage warehouses, stockyards, and race horse auctions take free of any security interest in the respective goods in which they deal unless the secured party gives them written notice of the interest. The secured party must also pursue a judgment against the debtor before he can commence an action against a purchaser or selling agent of livestock or grain.

9) Nebraska: [Neb. Rev. Stat § 90-9-307] The buyer of farm products is required to ask the seller for the name of the first security interest holder and must issue a check to be paid jointly to the seller and this secured party. If the secured party authorizes the cashing of the check, the buyer takes free of any security interest.

10) New Mexico: [N. M. Stat. Ann. § 55-9-306(2)] Forbids a security interest to be waived through any course of dealing or trade usage.

11) North Dakota: [N.D. Cent. Code, § 41-09-28] The seller of farm products must disclose to the buyer or commission merchant any security interests on the goods or be subject to criminal charges. The buyer must also request this information and make a check payable to both the secured party and the seller. If this is done, the buyer or commission merchant takes free of the security interest. The secured party must pursue the debtor for any loss sustained before seeking redress from the buyer or commission merchant.

12) Ohio: [Ohio Rev. Code, Tit. 13, § 1309.26] A buyer in the ordinary course of business of farm products takes free of any security interests unless he receives written notice within 18 months prior to the sale and he fails to make payment jointly to the seller and secured party. The debtor is required to provide a list to the secured party of those buyers to whom he may sell.

13) Oklahoma: [Okla. Stat. Amn., Tit. 12A, § 9-30] The buyer or commission agent of farm products other than livestock, to take free of a security interest, must require the seller to execute a document which discloses any security interests in the goods. The instrument for payment of the goods must be issued to the seller and any secured parties as joint payees.

14) Oregon: [Ore. Rev. Stat., Tit. 8, § 79.3070] Financing statements covering cattle, horses, or sheep must be filed with a central livestock department and shall subsequently be furnished to livestock auction markets, livestock dealers, and other livestock sales. If this statement is not filed, the security interest ends in the collateral upon disposition.

15) South Dakota: [S.D. Laws Ann., Tit. 57, § 9-307] The seller of farm products must disclose to the buyer or commission agent any security interests in the products or be guilty of fraud. The secured party must offer to file a complaint against the debtor before instituting an action against the buyer or commission agent.

16) Tennessee: [Tenn. Code Ann. § 47-9-30] A security interest in livestock or grain, tobacco, or soybean crops that are sold through commission merchants, meatpackers, or warehouses shall not continue unless written notice is given to these entities prior to the sale. If the secured party complies with this written notice requirement and still suffers loss, he must try to collect from the debtor before instituting suit against the commission merchants, meatpacker, or warehouse.

Peavey Company
Far West Region
P.O. Box 8500
Bozeman, Montana 59715
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Peavey

MONTANA HOUSE OF REPRESENTATIVES
COMMITTEE FOR BUSINESS AND INDUSTERY

For the record, my name is Dan Treinen, Merchandising Manager of Montana Operations for Peavey Grain Company's. I have held this position for some 5½ years with our office in Bozeman. I would like to thank Representative Ellard for introducing H.B. 597, Legislation which recognizes and seeks to remedy a situation that is fundamentally unfair to purchasers of agricultural products, that of "Double Payment" of agricultural products bought in good faith. The heart of the issue we address today is relatively short and simple: How do we rebalance the scales so that buyers of Agricultural products no longer bear a large degree of the risk in agricultural lending.

I have attached as an appendix to my testimony a rather extensive analysis of the Farm Products exception and would ask that the complete statement be included in the hearing record. This study was prepared at the behest of the American Meat Institute and was presented before the United States Senate Committee on Agriculture, Nutrition, and Forestry September 26, 1984 in support for S 2190 a similar piece of legislation as H.B. 597 on a National level. I would urge members of the committee study this document as it provides valuable insight to the problem as it has evolved, I will attempt to summarize.

The rule runs against the grain of general commercial law which seeks to encourage the free flow of commerce by protecting good faith pruchasers from the risk of prior liens. Generally, the law allows buyers who purchase goods in the normal course of business to pay and acquire full ownership. For example, when a customer pays a retailer for a refrigerator, the bank financing the retailer's inventory cannot thereafter pursue a claim against the customer. The same policy would apply when the retailer purchases its stock of appliances from the manufacturer: as a buyer in the ordinary course of business, the retailer would be protected from claims by the manufacturer's bank. By contrast the special rule for farm products frustrates the free movement of goods in commerce, and has never had clear policy justification.

The Lein Filing System which in theory discloses such leins is at best very frustrating and cumbersom. The purchaser of farm products must determine on which county the leins may be filed then the purchaser must either go to the county offices and go thru the leins filed or pay to have this service

performed. The Commodity dealer laws in Montana, state that a producer may demand 90% payment upon delivery of grain. The time constraints here leave us in a very unenvieable position of being involuntary guarantors of any loan that the borrowers have assumed. A borrowers failure to account for the proceeds of sale become the risk not of the professional lender, but of the innocent third party buyer.

You will hear today from opponents of this bill that the problem is infrequent for a small number of farmers, or that this problem exists only during times of a bad farm economy. This problem is always with us, the problem simply goes from costly to devastating when the farm economy slumps.

The opponents of this legislation will argue that farm products are somehow "unique". The transaction of farm products are no more unique than the sale of a tractor to a farmer. Where the farmer purchases from a dealer or manufacturer who borrowed money against the purchased equipment, the original lender carries the risk the dealer or manufacturer may default. The lenders recourse is in the courts--against the borrower. It is the borrower, not his customer, who broke faith and the law by not paying off the loan. We deny any uniqueness in farm products financing. Decisions to lend in all cases are based on prudent assessment of the borrower's capacity and character. The risks assumed by commercial inventory lenders always include the possible loss of collateral to third party buyers in the ordinary course of business; yet inventory financing flourishes. We have heard nothing that supports any claim by farm products lenders that their market uniquely entitles them to protections not available to other commercial financers.

The lenders raise the objection that the passage of this bill will substantially increase their financial losses and thus increase the cost of credit. Whatever impact a change in the law might have, its effects on the cost and availability of farm credit are likely to be negligible if even measureable. The state of California repealed the farm products exception in 1976, if there is any evidence that our largest agricultural state, or the lenders or producers within it, are suffering on that account, we are unaware of it. The likely reality is that, with the farm products exception gone, lenders will tighten their administrative supervision of producers to minimize the risk of unaccounted-for proceeds. It could be that changing the law in this regard will reduce lender losses by encouraging more prudent practices across the board.

The California experience also negates the argument that to remove the farm products exception will place AG lending in jeopardy. "In California, most farmers require some degree

of operational financing," says CGFA. "I can tell you there are a multitude of agricultural lenders ready, willing and able to provide the required financing at rates that are affordable, despite the changes made to Sect.9-307(1)...I have never heard of a single instance of a grower not being provided financing because of the clear title issue."

As to the loss of the farm products exception acting to artificially increase the cost of credit, California Grain & Feed reports that discussions with AG lenders within California indicate that the interest rate charged on a production loan is generally directly related to the perceived ability of the grower to repay the loan. This is as it should be.

Ultimately the sole question presented by H.B. 597 is whether the Montana legislature should act to correct an inequitable state law rule that has inflicted millions of dollars of losses on purchasers of farm products. In summation the issue can be captured in a excerpt from a House of Representative hearing in Washington D.C. when a lender who had lodged a claim against a livestock buyer was asked whether he had pursued the borrower himself, the reported response was "No Sir, because under the law it is easier to come after you." This is the farm products exemption in its essence.

Mr. Chairman, I would urge a DO PASS VOTE.

Thank you,

Dan Treinen

STATEMENT OF RICHARD L. MATTEIS
CALIFORNIA GRAIN AND FEED ASSOCIATION
FOR
THE HOUSE BUSINESS AND INDUSTRY COMMITTEE
HEARING ON MONTANA H B 597

My name is Richard L. Matteis, Executive Vice President of the California Grain and Feed Association (CGFA). The association represents 510 member firms involved in various phases of the grain and feed industry. I have asked that the Montana Grain Elevator Association present my statement for the record.

The issue of "clear title" is one that we in California know well. As you may know California is the only state that grants the same Uniform Commercial Code protections to buyers of farm products as are provided to purchasers of other kinds of commodities. As such, we are the only state with first hand knowledge of and practical experience with a system that insures that buyers of farm products have clear title to the commodities they buy. Most of what you have heard or will hear from the opponents of clear title legislation is pure conjecture while we have empirical evidence that providing such protections to buyers of farm products is actually of benefit to all concerned parties--purchasers, growers and lenders.

Effective January 1, 1976, Section 9307(1) of the California Commercial Code was amended to delete the wording "other than a person buying farm products from a person engaged in farming operations." This change extended to buyers of farm products the

same protections provided to buyers of other goods. Since that time we know of no occasion when a buyer of farm products has had to pay twice for the same commodity. Representatives of the California Bankers Association have asserted to this fact.

Opponents of clear title legislation claim that allowing farm product purchasers to buy products free and clear will jeopardize the ability of farmers to obtain financing. I can tell you that most farmers in California require some degree of operational financing. I can also tell you that there are a multitude of agricultural lenders ready, willing and able to provide the required financing at rates that are affordable despite the changes made to Section 9307(1) in 1976. California has been the number one agricultural state in the nation for all those years since amendment of the code and, therefore, it is difficult for me to believe that amending the statute has had any significant impact on the state's agricultural economy or the ability of growers to obtain credit. I have worked for agricultural trade associations for the past ten years and have never heard of a single instance of a grower not being provided financing because of the clear title issue.

Some also claim that the cost of financing will escalate if clear title is provided. We all know that there are many variables impacting the cost of capital. It would be impossible to determine what impact amending the California law has had on the cost of

agricultural financing. However the last several weeks I have attempted to develop some information on this aspect. In talking with lenders it seems that the interest rate charged on a production loan is directly related to the perceived ability of a particular grower to repay the loan. I am not saying that this is true in all cases, but it is apparently a primary factor for private lending institutions. I doubt that the clear title clause is given any consideration in determining agricultural interest rates.

This year legislation was introduced in the California legislature on a related matter. This legislation resulted in new discussions between our industry and the banking industry on the question of clear title. After thorough analysis of Section 9307(1) of the Commercial Code representatives of the California banking industry declared that the newly proposed legislation would place the clear title protections of the code in jeopardy and ,to our surprise, they preferred to see those protections remain intact.

The banking industry representatives indicated that they were concerned about losses due to the amendment of 9307(1) initially, but ultimately found that the law worked to their advantage. Apparently, prior to the change in the law in 1976 lenders found it necessary to issue lien waivers in order for their growers to be able to sell their crops. Without the lien waivers buyers were reluctant to purchase farm products. The California Bankers

Association indicates that the change in the law has eliminated the need to undertake the costly and burdensome task of issuing lien waivers.

Many lenders do protect themselves by voluntarily notifying potential purchasers of the crops in which they have a security interest and requesting that payment checks be made payable to them and the growers as copayees. Purchasers are willing to cooperate in most cases and we know of no problems in California caused by the clear title provisions of the Commercial Code.

California has served as the pilot project on the solution to the clear title problem and the project is a success. It is now time to extend to all buyers of farm products the same protections provided to buyers of all other kinds of goods. There has not been a disruption caused in the field of agricultural financing and lenders have even indicated a preference for the situation today over that which existed prior to 1976.

We appreciate this opportunity to comment.

Exhibit 6
2/21/85
HB597
Submitted by: Elroy Letcher

Montana Council of Cooperatives
P.O.Box 367
Helena, Montana 59624
406-442-2120

For the Record I am Elroy Letcher, Executive Secretary of the Montana Council of Cooperatives.
Our Organization represents the Farmer Owned Supply Cooperatives as well as the Farmer Owned Grain Marketing Cooperatives. We also represent the Cooperative Farm Credit System Lenders.
I Appear today on behalf of the Farm Credit System Lenders as an Opponent to HB-597.
We have appeared in opposition to all bills introduced during this Session seeking to establish a priority lien for those selling agricultural input items to agricultural producers.

We oppose this bill for the same reasons , that it would work to the disadvantage of the majority of producers and tend to restrict the availablity of credit.

PCAs relay on crop liens as collateral for the funds advanced for production. we nor any other lender should be expect to provide the funds and bear the entire risk.

WE realize the present filing system used in Montana makes if difficult for those buying agricultural products to determine just who has a lien, especially when crops are often marketed many miles from the production site.
But we feel much progess has been and will continue to be made thru the joint efforts of the Lenders and Grain Elevator Assns, in the development of a Central System of Filing Agricultural Liens in SB-129.
In this area I can speak not only for our members that make up the Cooperative Farm Credit System, but also the Cooperatively owned Grain Marketers, in that with the passage of SB-129 There is no need for HB-597.

Therefore we would ask this committee, to give this bill HB-597 a do not pass recommendation.

Thank You

Elroy Letcher
Executive Secretary
Montana Council Of Cooperatives
442-2120 or 443-3497

Exhibit 7
2/21/85
HB852
Submitted by: Bob Gannon

House Bill 852

Introduced Bill

1. Page 2, line 21.
   Following: "plant"
   Strike: ",property,"

2. Page 3, line 14.
   Following: "commission"
   Insert: ", or its successor,"

3. Page 3, line 16.
   Following: "utility"
   Strike: "leasing"
   Insert: ", as lessee of"

4. Page 3, line 19.
   Following: "section"
   Insert: ","

Exhibit 8
2/21/85
HB 852
Submitted by: Opal Weinbrenner

PUBLIC SERVICE COMMISSION
2701 Prospect Avenue • Helena, Montana 59620
Telephone: (406) 444-6199

THE PUBLIC SERVICE COMMISSION'S
POSITION STATEMENT ON H.B. 852

The PSC supports this bill on the condition that the attached amendment is adopted.

The PSC believes that the exemption the bill provides is a valid qualification to Montana's public utility's laws. In addition, the bill's provisions reasonably insure that the exemption would not result in adverse impacts on ratepayers, if the proposed amendment is adopted.

Proposed Amendments

The leases that are contemplated would be in effect for a number of years. The provision that the PSC proposes to amend, makes the PSC's approval final without the possibility for modification or revocation, except under certain limited conditions. The proposed amendment would add another condition. That condition would allow changes of the order if evidence in existence at the time the order was approved, 1) was not presented to the PSC; 2) is relevant to the basis upon which the PSC made its decision; 3) there is a good reason for failure to introduce the evidence to the PSC before the order was issued.

The PSC believes that this amendment will encourage full disclosure of all facts surrounding the request from a utility while at the same time protecting the lessor from unexpected changes in the original order.

This proposed amendment was discussed with MPC, both before and after introduction of the bill.

PUBLIC SERVICE COMMISSION 2701 Prospect Avenue • Helena, Montana 59620
Telephone: (406) 444-6199

The Public Service Commission's Proposed Amendments to H.B. 852

Page 3, line 9.

Strike: "."

Insert: ", or unless evidence that was not presented at the original proceeding is later presented to the commission. Such evidence cannot be used as the basis for modification or revocation of the order unless it is shown that there were good reasons for failure to present it at the original proceeding, and that the evidence existed prior to issuance of the final order."

2/21/85
Exhibit 10
HB853
Submitted by:
Louise Kunz

Louise Kunz
107 Lawrence
Mt Low Income Coalition

We support HB 853. It will not only assure a job market for Montanans but if you will include a provision to target a portion of these jobs for the long time unemployed, the low income, it will also aid in reducing the General Assistance problem currently being agonized over. Coupling of these types of legislation is an effective way to solve the very real human needs problems in our state.

Approximately one year ago, when B.C.C. & MLIC discussed this issue with the Governor who said while he wouldn't agree to say he'd sign a bill having seen he would favor a bill of this type.

Exhibit 11
2/21/85
HB 855
Submitted by: Rep. Garcia

49th Legislature LC 1707

STATEMENT OF INTENT

___ BILL NO. 855

A statement of intent is required for this bill because section 5 permits the board of medical examiners to adopt rules in accordance with the Montana Administrative Procedure Act to administer the Rolfing Practice Act of 1985. It is contemplated that the rules should address the following:

(1) contents of forms for application for examination, licensure, and renewal of license;

(2) fees commensurate with costs for examination, licensure, renewal, and reinstatement;

(3) contents of the written examination required to test an applicant's competency;

(4) minimum score for passing the examination;

(5) criteria for giving board approval for schools of rolfing; and

(6) guidelines for comparing licensing requirements in other states for applicants licensed outside Montana.

Exhibit 9
2/21/85
HB 458
Submitted by: Jeff Kirkland

House Bill 458

Testimony of Jeffry M. Kirkland

Vice president-Governmental Relations

Montana Credit Unions League

Before the House Business & Labor Committee

on Thursday, 21 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 458.

House Bill 458 would amend the state's Electronic Funds Transfer Act to allow off-premise Automated Teller Machines ("satellite terminals" to use the language of Montana's Electronic Funds Transfer Act) to be established in communities where financial institutions have branch offices. Currently, they can only be established in communities where the financial institution's main office is located.

Three types of financial institutions in Montana can establish branch offices--and without any geographic restrictions: state-chartered credit unions, federal credit unions, and federal savings and loan associations. House Bill 458 would affect only those three.

The Montana Legislature gave state-chartered credit unions branching authority in 1981. And both federal credit unions and federal S&Ls, as entities of the federal government,

CAN ESTABLISH BRANCH OFFICES IRRESPECTIVE OF MONTANA LAW. MORE OFTEN THAN NOT, THOSE BRANCH OFFICES ARE LOCATED IN COMMUNITIES OTHER THAN WHERE THE CREDIT UNION OR S&L HAS ITS MAIN OFFICE.

THE BANKING COMMUNITY IS THE ONLY SECTOR OF THE FINANCIAL SERVICES INDUSTRY THAT DOES NOT HAVE BRANCHING AUTHORITY. AND THAT'S DUE PRIMARILY TO INTER-INDUSTRY DIFFERENCES AMONG THE BANKERS. SINCE BANKS CANNOT ESTABLISH BRANCH OFFICES UNDER MONTANA LAW, THE BILL WOULD HAVE NO EFFECT ON THE BANKING COMMUNITY UNLESS THE LEGISLATURE WERE TO ALLOW BANK BRANCHING IN SOME FUTURE SESSION. ONLY THEN WOULD THE PROVISIONS OF THE BILL APPLY TO BANKS.

WHAT WOULD HOUSE BILL 458 DO? IT WOULD ALLOW A CREDIT UNION OR S&L TO ESTABLISH AN OFF-PREMISE "SATELLITE TERMINAL" NO MORE THAN THREE MILES BEYOND THE MUNICIPALITY WHERE ITS MAIN OFFICE <u>OR ITS BRANCH OFFICE</u> IS LOCATED. CURRENT LAW ONLY ALLOWS A "SATELLITE TERMINAL" TO BE ESTABLISHED IN REFERENCE TO THE MAIN OFFICE OR "PRINCIPAL PLACE OF BUSINESS."

I'LL USE A STATE-CHARTERED CREDIT UNION AS AN EXAMPLE. A CREDIT UNION WITH ITS MAIN OFFICE IN HELENA HAS A BRANCH OFFICE IN BOZEMAN. IT WOULD LIKE TO PLACE AN OFF-PREMISE "SATELLITE TERMINAL" SOMEWHERE ON THE COLLEGE CAMPUS. UNDER CURRENT LAW, IT CANNOT DO SO. IT CAN ONLY PLACE AN OFF-PREMISE TERMINAL IN THE COMMUNITY WHERE ITS MAIN OFFICE IS LOCATED--HELENA.

HOUSE BILL 458 WOULD AMEND THE ELECTRONIC FUNDS TRANSFER ACT TO ALLOW THE HELENA CREDIT UNION TO ESTABLISH AN OFF-

PREMISE "SATELLITE TERMINAL" IN THE COMMUNITY WHERE ITS BRANCH OFFICE IS LOCATED--IN THIS CASE, BOZEMAN. THE GEOGRAPHIC RESTRICTION OF NO MORE THAN THREE MILES FROM THE MUNICIPALITY WHERE EITHER THE MAIN OFFICE OR THE BRANCH OFFICE IS LOCATED WOULD STILL APPLY TO THE PLACEMENT OF THE TERMINAL.

THERE ARE THREE SECTIONS TO HOUSE BILL 458. SECTION 1 AMENDS THE STATE CREDIT UNION STATUTES CONTROLLING BRANCH OFFICES (PAGE 1, LINE 12, LINES 20-21, AND LINE 23; AND PAGE 2, LINE 1 AND LINE 6) BY INCLUDING "SATELLITE TERMINAL" IN THE DEFINITION OF "ADDITIONAL OFFICES"--ANOTHER TERM FOR BRANCH OFFICE. THAT'S SO OUR REGULATOR CAN AUTHORIZE AN OFF-PREMISE TERMINAL UNDER THE SAME PROCEDURE AS HE WOULD AN ADDITIONAL BRICK-AND-MORTAR OFFICE.

SECTION 2 AMENDS THE CURRENT ELECTRONIC FUNDS TRANSFER ACT BY INDICATING THAT A FINANCIAL INSTITUTION MAY INSTALL A "SATELLITE TERMINAL" WITHIN A SPECIFIED GEOGRAPHIC DISTANCE NOT ONLY OF ITS MAIN OFFICE BUT ALSO OF A BRANCH OFFICE IF A BRANCH OFFICE IS ALLOWED (PAGE 2, LINES 19-20, AND LINES 22-23).

AND SECTION 3 ENSURES THAT THE SAME GEOGRAPHIC RESTRICTIONS THAT APPLY TO THE PLACEMENT OF A "SATELLITE TERMINAL" IN REFERENCE TO THE MAIN OFFICE OF A FINANCIAL INSTITUTION ALSO APPLY TO ITS PLACEMENT IN REFERENCE TO A BRANCH OFFICE IN ANOTHER COMMUNITY (PAGE 3, LINES 18-19 AND LINE 22). THAT IS, A "SATELLITE TERMINAL" COULD NOT BE LOCATED MORE THAN THREE MILES BEYOND THE MUNICIPALITY WHERE ITS BRANCH

OFFICE IS LOCATED--EXACTLY THE SAME GEOGRAPHIC RESTICTIONS AS PERTAIN TO A "SATELLITE TERMINAL" AND A MAIN OFFICE.

HOUSE BILL 458 WOULD ACCOMPLISH ONE SIMPLE THING: IT WOULD ALLOW THE THREE TYPES OF FINANCIAL INSTITUTIONS THAT HAVE THE AUTHORITY TO ESTABLISH A BRANCH OFFICE IN MONTANA TO INSTALL AN OFF-PREMISE "SATELLITE TERMINAL" IN THE SAME COMMUNITY WHERE THE BRANCH OFFICE IS LOCATED.

THE "MAIN OFFICE" LANGUAGE AND THE THREE-MILE GEOGRAPHIC RESTRICTION WERE PLACED IN THE ELECTRONIC FUNDS TRANSFER ACT WHEN IT WAS ENACTED IN 1977 TO PLACATE THE INDEPENDENT BANKERS WHO LOOKED AT THE ACT AS AN INCURSION OF THE HOLDING COMPANIES INTO BANK BRANCHING. HOWEVER, IT HARDLY SEEMS FAIR THAT BANKING'S INTER-INDUSTRY ARGUMENT SHOULD PLACE BANKING-TYPE RESTRICTIONS ON THE OTHER TYPES OF FINANCIAL INSTITUTIONS IN MONTANA THAT HAVE NO SUCH RESTRICTIONS OTHERWISE.

WE CAN LIVE WITH THE THREE MILE GEOGRAPHIC RESTRICTION FOR PLACEMENT OF TERMINALS. BUT SINCE MANY S&LS AND SOME CREDIT UNIONS HAVE BRANCH OFFICES IN COMMUNITIES OTHER THAN WHERE THEIR MAIN OFFICES ARE LOCATED, WE FEEL IT ONLY MAKES SENSE TO PROVIDE THEM THE AUTHORITY TO INSTALL "SATELLITE TERMINALS" IN THE SAME COMMUNITIES WHERE THEIR BRANCH OFFICES ARE LOCATED.

WE WOULD APPRECIATE YOUR CAREFUL CONSIDERATION OF HOUSE BILL 458 AND RESPECTFULLY URGE THAT THIS COMMITTEE RECOMMEND THAT HOUSE BILL 458 "DO PASS."

Exhibit 12
2/21/85
HB 855

Submitted by:
Gary Robinson

Purpose for licensing Rolfing in the State of Montana:

1. To protect the people of the State of Montana from any incorrect behavior and any practice of Rolfing that may be irregular, as deemed by the proposed bill now before the Legislature.

2. To assist Rolfers in dealing with insurance companies. 90 percent of Rolfing clients and patients in Montana are physician referrals, these clients are all on some kind of insurance payment or disability. And there is a constant struggle with insurance companies in either approving Rolfing as a treatment even though there has been a prescription recommending Rolfing. The other problem is with some insurance companies that are [illegible], and then try to get out of paying for the services because the Rolfer, and Rolfing, is not licensed, by the State of Montana. A typical response of this would be as follows; "Thanks for your recent letter dated 07-[illegible]-84. Assuming the coverage is in force at the time of treatment and charges are related to sickness or injury we will cover the charges for Rolfing. If you have any questions please feel free to call us". This letter was dated [illegible]. The next response from the insurance company in [illegible] with the patient residing and working in Montana, was this; "Recently we received a bill from you for services rendered to (patient's name). Before we can consider the charges please furnish us your license number and also advise, do you practice under the supervision of a physician." And this last response was after the insurance company had received the bill after completion of the treatments. Treatments were completed in December of 1984. This last letter is dated January of 85. As of this date there has been no response from the insurance company.

3. Rolfing should be licensed so as to protect other Rolfers in the State of Montana, who are certified to do the work, from those individuals who are practicing under the name of Rolfing and have not had the training or the certification to do Rolfing.

Rolfing is not the following:

What is it that Rolfers do not do. Rolfers do not use any type of manipulation, and therefore do not [illegible] to be classified as massage. Rolfers do not prescribe medicine, of any kind, do not diagnose disease, do not use x-ray equipment, do not do surgery of any kind, we do nothing [illegible]

perform. Rolfers do not use ultra sound equipment, equipment that can be considered traction in nature, electrical equipment of any kind. Therefore Rolfers are not doing the same or even similar types of therapy that may be accomplished by a physical therapist. Rolfers do not adjust the spinal column, or do any bone adjustments, therefore Rolfers do not practice the healing art that is reserved for chiropractors.

Myofascial Pain and Dysfunction:

Rolfers that work with physicians deal mostly with what is called Myofascial Trigger Points, TP's. A "TP" is a focus of hyperirritability in a tissue that, when compressed, is locally tender and, if sufficiently hypersensitive, gives rise to referred pain and tenderness, and sometimes to referred autonomic phenomena and disturbances of proprioception. Tissues include myofascial, cutaneous, fascial, ligamentous and periosteal trigger points. To better understand this lot us understand what fascia is. Fascia is protein, it is connective tissue, it is the stuff that we are made of. There are several layers of fascia, the first, called superficial fascia is just beneath the skin. This layer of fascia is literally the only that we live in , it surrounds the whole body, beneath the skin this goes as the shape that we see each other as. From here there are many layers of fascia, let's take the biceps or the arm for example, each of us has a muscle in the upper arm called the biceps. This muscle is actually two muscles, that is why the name begins with bi= means two. This muscle group is surrounded with fascia, then each of these two muscles in turn has it's own layer of fascia, in each of these two muscles there are many individual muscle fibers that make up each muscle, each muscle fiber also has it's own layer of fascia, and it is here that arteries, veins and nerves migrate through the body. Each muscle fiber is composed of hundreds of muscle cells, and these also are surrounded and layered with fascia. What we are saying here is that fascia is present throughout every aspect of the body, a very common system. Fascia in combination with the muscle it encloses, is called myofascia. If we were to look at fascial layers then would appear as a very convoluted cobweb like structure.

Prevalence: Myofascial TPs are extremely common and astounding a distressing part of nearly everyone's life at one time or another. Latent TPs, which may cause some stiffness and restricted range of motion, are far more common than active TPs.

Among 100 unselected, apparently normal adults, there was found local tenderness corresponding latent TPs in the shoulder-girdle muscles of 54% of the females and 45% of the male subjects. Referred pain was demonstrated in 1/3 of these subjects. An considerable study of the

reported.

In a population of hospitalized and ambulatory Physical Medicine and Rehabilitation [illegible] patients, with the fibrositis syndrome (FS), the greatest number were between 31 and 50 years of age. Individuals in their mature years of maximum activity are most likely to suffer from the pain syndromes of active myofascial TPs. With advancing age and reduced activity, the stiffness and restricted range of motion of latent TPs become more prominent than pain. Latent TPs can become active, painful, at any time.

Severity: The severity of symptoms from myofascial TPs ranges from painless restrictions of motion due to latent TPs, so common in the aged, to agonizing incapacitating pain caused by very active TPs. The potential severity of this common malady is illustrated by one housewife who, while bending over cooking, activated a quadratus lumborum, back and side muscle, TP that felled her to the floor and caused pain so severe that she was unable to reach up and turn the stove off to prevent a pot from burning through its bottom.

Cost: Unrecognized myofascial headache pain and low back pain that have become chronic are major causes of industrial lost time and compensation applications. It has been pointed out that disabling chronic pain costs the American people billions of dollars annually. Low back pain alone cost the people of California $200 million dollars annually. The considerable portion of chronic pain due to myofascial TPs can be relieved by their diagnosis and appropriate treatment.

How many more people are there, who do carry on, yet bear the misery of nagging TP pain that would respond, if diagnosed and treated for what it is? When the myofascial nature of pain is unrecognized, such as the mimicking of cardiac pain by TPs in the pectoral muscles, the symptoms are likely to be diagnosed as neurotic, adding frustration and self doubt to the patient's misery. Active myofascial TPs are largely responsible for the scourge of mankind, musculoskeletal pain. The total cost is enormous.

Outline of typical referral for a patient:

A typical time for a patient that has come by way of a referral from a physician is one that has been through the entire cycle of physicians, physical therapists, and in many case's chiropractors. And in 90% of the referrals that [illegible] I receive the patient is a year or longer after the patients initial visit to a physician, after the accident, if that is the case. In most cases in my practice almost all of my clients have been in pain for anywhere from a year to seven years, a great majority have [illegible]

time, and yet after all the surgery and drugs, and physical therapy there are some people that are still suffering for myofascial pain syndrome. We are not sure why most people respond to the usual types of therapy and then some do not. And those that do not normally are left with their pain for the rest of their lives. In some cases these individuals are said to be suffering from some kind of psychological problem, but that would be understandable in that these people have been on some kind of worker's compensation and have been out of work, in some cases for several years. And this is usually the time that the patient is referred to the Rolfer, when the patient has not responded to traditional therapies.

In Montana a referral patient, from a medical doctor, has already been to physical therapy, and if there has not been sufficient progress the patient will next be referred by the Rolfer. The patient will be given a prescription for ten Rolfing sessions, each session lasts from one to two hours. During this series of time the client will be asked to lay in various positions while on a rolfing table, and the sessions will begin. The cost per session for Rolfing ranges from $40 to $60 in Montana, in other states it can range as high as $100 per session. The Montana fees are comparable to fees that are charged by a physical therapist in Montana.

What occurs is that the Rolfer will use his/hers fingers, palm of the [illegible] to [illegible] and manipulate certain areas of the body, with this manipulation there will occur a softening of the involved muscles and with that the lessening of pain, whether it be latent, or chronic. Each session will deal with a different part of the body, with the intention of balancing the overall structure, paying close attention to that specific area of the body that is in chronic to acute pain.

In my practice in Billings last year I gave Rolfing sessions to all people that were physician referrals, in addition to my regular practice. That is 600 Rolfing sessions, via physicians referrals. All of these people were in some degree of pain, and suffering from the following diagnosed by a physician, virtually all had:

Herniated disc, lumbar and cervical.
Thoracic outlet syndrome.
Post operative thoracic outlet syndrome.
Scoliosis.
Subscapular nerve compression.
Nerve root irritation.
Cervical pain.
Muscle spasms.
Chronic injuries.
Head injuries.
M.S.
Lumbar disc syndrome.
Cervical arthritis.

January [illegible]

Compression fracture.

Cerebral palsy.

Subacromial [illegible] syndrome.

TMJ, Temporal mandibular joint.

Children that have inverted knees.

Children that have inverted feet.

These are just a few of the problems that my clients had this last year of [illegible]. Of those [illegible] there were 60 clients and of these 60 people 5 did not respond to Rolfing treatment. The 55 others either returned to work or were in a position that they would qualify for occupational rehabilitation. The 5 that did not respond are now being considered for less conservative methods of treatment.

There are currently 3 Certified Rolfers in the State of Montana. There are two women in Billings that will be entering training this year, a man in Kalispell entering training this year, and a man from Missoula entering training this year. Billings, Montana is the same size, population, as Boulder, Colorado, and there are currently 25 Certified Rolfers in Boulder, Colorado. This will give you an understanding as to the number of Rolfers that may be in Montana over the next few years.

Currently in Montana there is no regulation for Rolfers. We are Certified by The Rolf Institute in Boulder, Colorado which is a Colorado State Approved Educational School. Therefore we are asking to be regulated by the State of Montana for the purposes stated above.

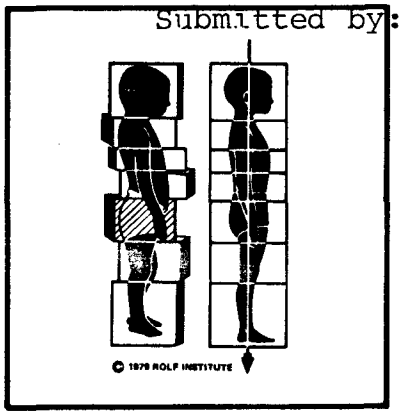
Respectfully,

Gary A. Robinson

Gary A. Robinson
Certified Rolfer
242 [illegible] Blvd.
Billings, MT [illegible]
(406) 256-2100

Exhibit 13
2/21/85
HB 855
Submitted by: Gary Robinson

ROLFING: How it Works



It has become a cliche of our hectic civilization to say certain people are "off balance." But to practitioners of Structural Integration, known popularly as "Rolfing," the description takes on a literal meaning. Although many persons have now heard of "Rolfing" from friends, they have only a vague notion of its origin, what the treatment is and what it does.

Rolfing is a technique of deep massage to bring the major segments of the body — head, shoulders, thorax, pelvis and legs — toward a vertical alignment. In this alignment the weight is distributed through the myofascial components, leaving the musculature free for its function of balancing and moving weight. The bones act as "stretchers" to keep individual muscles and myofascial systems apart — appropriately spaced so that they can accept the weight distribution. Rolfing consists of 10 one-hour sessions — usually once a week. The changes induced by Structural Integration processing are permanent and need not be repeated.

Structural Integration contends that gravity puts a lot of stress on the human being, so the method naturally puts a lot of stress on gravity. The argument is that gravity, the strongest force acting on most people, is so omnipresent we are usually quite unaware of it. But that doesn't stop us from making constant adjustment which takes it into account, even though for the most part this is automatic.

According to the Rolfing method, the key to an efficient and graceful relationship to the field of gravity is a body in which the weight remains close to a vertical central axis. All Structural Integration work is a process of lengthening, and pictures reveal that after Rolfing a person is taller, straighter, more erect.

The treatment is named after Dr. Ida P. Rolf who has been developing the process for a half-century. Dr. Rolf, a Columbia Ph.D., worked for many years for the Rockefeller Institute doing biochemical research. The insights gained from her interest in yoga, and the necessity of dealing with her own arthritis, led to the present methodology.

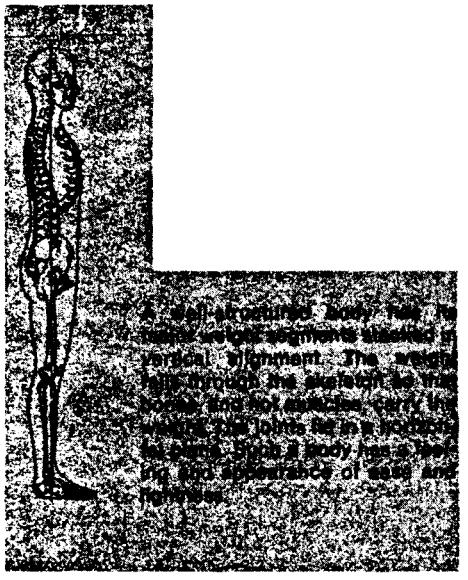
Rolfers claim it is the very plasticity of the body which allows for the compensatory mechanisms by which people adjust to accidents. A fall from a bicycle, for example, that twists a knee will cause a limp. The shifting of weight to the strong leg restructures the play of muscular effort, not only in the legs, but eventually through the whole body. This creates a distortion. Thus for persons recovering from injuries, the deep massage technique of Rolfing seems to have a special message.

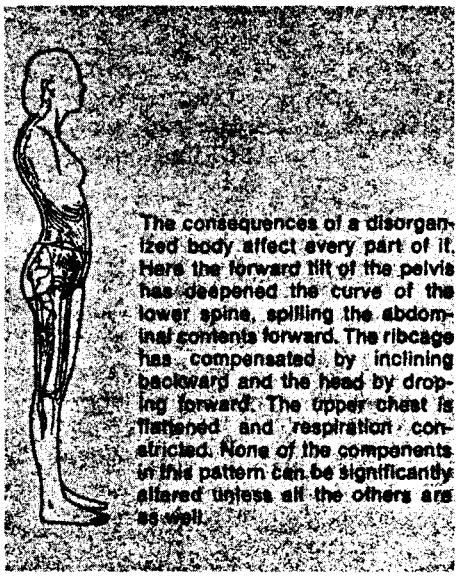
The Rolfing technique of deep body massage — is aimed at releasing patterns of tension. The massage is not directed at "fixing the body" but toward putting the body in balance. It is a contention of the Rolfers that almost everybody is off-balance, at least physically. But there are also definite psychological implications in their theory — for practitioners of Structural Integration, our body's contours show the dramatization of our consciousness.

Although they don't claim that Structural Integration is a substitute for psychoanalysis, Rolfers do believe that the psychological to some extent does reside in the physical. What they go after with their deep massage is the fascia: the connective tissue which envelopes the muscles which give the body shape. According to Rolfers, it is this very fascia which allows the body to get out of shape because of the body's remarkable plasticity.

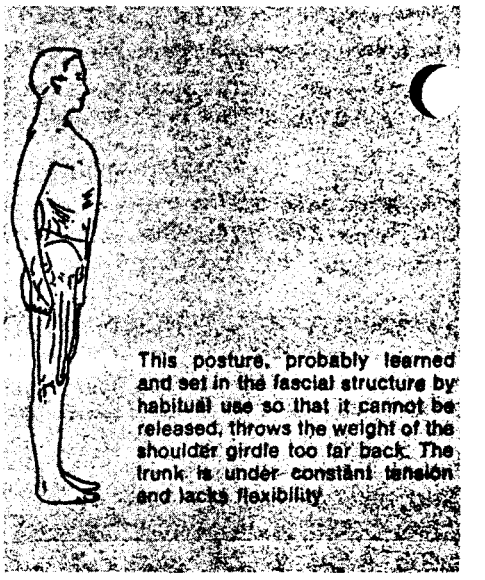
The average individual has let his body weight slip out from the vertical axis and thus become unbalanced. His head has slumped forward and his body has become twisted as it has slumped; one shoulder or one side of his pelvis may lead the other as he walks. One foot possibly carries more weight than the other. The primary force for the distortion comes from repeated patterns of self-use, the way an individual walks, sits, or sleeps. patterns of imbalance tend to reinforce themselves; they feel comfortable and natural — balanced in fact. Over the years they deepen themselves and the weight centers move progressively further from the vertical axis. These patterns, which are generally established in infancy, draw heavily on parental example and on other environmental factors.

As compensations set in, the musculature is forced to take on unnatural tasks. The function of most muscles is to shorten and then release in order to bring about movement. When they consistently take on tasks they were





The consequences of a disorganized body affect every part of it. Here the forward tilt of the pelvis has deepened the curve of the lower spine, spilling the abdominal contents forward. The ribcage has compensated by inclining backward and the head by dropping forward. The upper chest is flattened and respiration constricted. None of the components in this pattern can be significantly altered unless all the others are as well.



This posture, probably learned and set in the fascial structure by habitual use so that it cannot be released, throws the weight of the shoulder girdle too far back. The trunk is under constant tension and lacks flexibility.

not meant for, their fascial envelopes tend to take on the quality of bone, becoming hard and inelastic and increasingly incapable of contraction and release — in fact fossilized. Tightness spreads through the fascial network; the body locks up and the joints lose their freedom. By Rolfing the fascia (connective tissue), the body gets its full movement back.

Although putting the body into balance is the objective of Rolfing, those who have undergone the treatment almost always report certain important mental side effects. Dr. Rolf maintains that "physical functioning and psychological functioning are just different aspects of the same process, so when one changes, the other must change."

Most forms of psychotherapy attempt to locate traumatic moments of pain in order to release the grip of the terrors, techniques that rely upon encouraging the patient to verbalize subconscious material. But the possibility that the physical body itself might provide the most direct avenue of evidence, recall and release, has not occurred to many practicing therapists. Only the most radical psychotherapeutic groups, namely the Reichian and Gestaltist factions have paid more than lip service to the idea that the body might be the key to open the personality to the winds of change.

Studies indicate that Rolfing indeed causes significant alterations in neural activity and brain functioning. Valerie Hunt, head of the Movement Behavior Laboratory at UCLA, found that after the study of the effect of Rolfing on 14 persons, that there was less neuromuscualr static, less random tension, and more efficient patterns of energy use. Edward Maupin, a Ph.D. in clinical psychology, says that he had Rolfed someone, for whom the series of 10 sessions "were the equivalent of a complete psychoanalysis, including resolution of transference." Although few Rolfers would go this far, they are adamant in their claims of what Structural Integration can achieve — even psychologically — for someone who is recuperating from an accident.

Dr. Rolf wanted to know why more people didn't take advantage of this physical phenomenon. She discovered that many times they couldn't attain a good vertical posture because they were locked into their customary positions. A person who always juts his chin forward, or rounds his shoulders, might be physically unable to do any differently without a great deal of effort and possibly pain. Dr. Rolf, through study, analysis and practical experience, concluded that it was the fascia, or connective tissue, which was retaining the poor posture patterns. Fascia surrounds all the muscles, tendons, etc., of the body in an interconnecting sheath. When a part of the body is injured or chronically held in a position out of the vertical alignment, the fascia thickens or sticks to itself at connecting points in order to support the increased load on the area's muscles. These thickened areas remain even after the injury has healed, and prevent the body from totally regaining its previous freedom of movement. In addition, since the fascia is an interconnecting system, changes in one area may cause compensations to spread to other parts of the body.

Dr. Rolf reasoned that if she could release the fascia in the places where it was stuck, the body could return to its structurally optimal position. She learned to accomplish this by applying pressure to the tissue in the direction it was originally intended to move. Since fascia is interconnecting, she had to work over the entire body lest remaining problems pull the corrections out of line again. She evolved a system of 10 sessions in which every part of the body was worked on and then integrated with the whole. (Most Rolfers charge approximately $50 for each of the sessions).

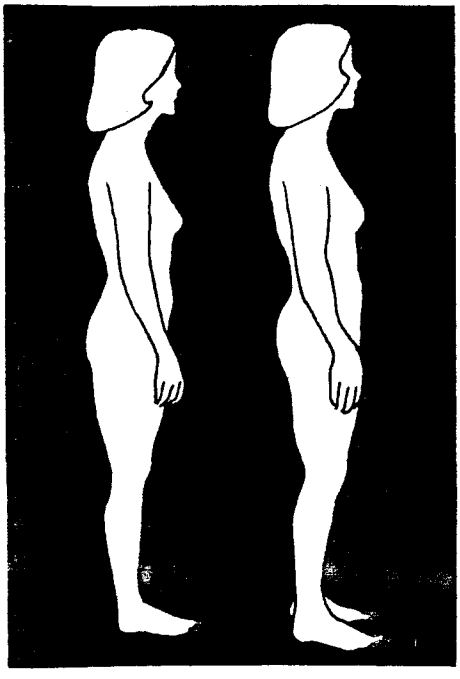
The first seven sessions concentrate primarily on individual parts of the body, such as the chest, legs, head and neck. The last three re-integrate the whole body along its new lines.

To hold the body in a position not optimally aligned requires muscles and soft tissue to support the body structure against gravity. As the body is moved back into an optimal position, the muscles finally have a chance to relax. This relaxation of prolonged tension is often felt by the person being Rolfed as a trembling all over the body or light-headed, 'spacey' feeling. The muscles have been freed for the work they were intended to do, to move the body.

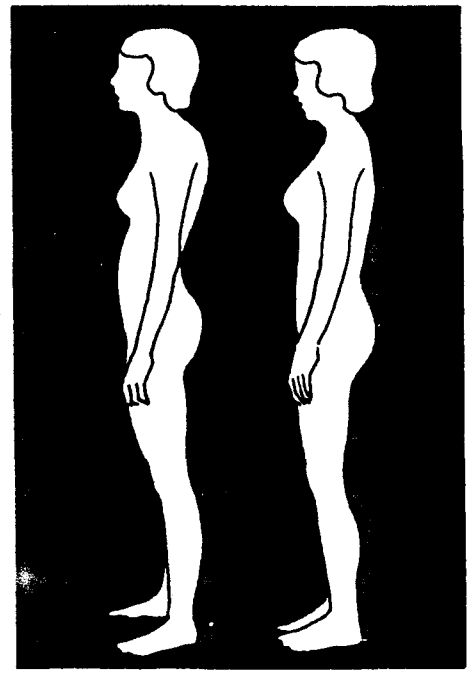
The method of releasing the knots appears similar to massage. Pressure — at times very strong pressure — is applied along the muscles, tendons, etc. The Rolfer can feel the tension areas in the normally smooth tissue and uses fingers, knuckles or elbows to push them along the tissue according to the pattern prescribed by Dr. Rolf. Sometimes they smooth out easily, sometimes they do not. But any pain goes away when the pressure is released.

Ida Rolf has made these statements about her technique: "We are interested in making a more adequate body for men and women so that they can disregard the problems of the body and stick to the things that they want to stick to — their job or their sports." "We don't set out to "cure" a body. But we get that body to grow to a place of greater grace in movement and greater capacity for moving and adjusting."

Dr. Rolf knows that the people she and her fellow Rolfers worked on improved their posture, muscle patterns, relaxation, etc., but being a scientifically-oriented person she is not satisfied with subjective impressions. She has encouraged researchers to investigate Rolfing, in the hopes of discovering exactly how and why it works. To date, the most complete study is the one done by Valerie V. Hunt and Wayne W. Massey of the UCLA Department of Kinesiology, in 1973.



In drawings taken from actual before and after photos, you can see what changes take place. This woman's pelvis leveled out.



This 20-year-old woman's back lengthened, her head came back, and her legs became unbowed.

SUMMARY:

Structural integration attempts to enhance overall personal functioning by bringing the body into better balance through systematic manipulation of bodily tissues. It consists of a series of sessions (usually 10) over the course of which the practioner works at first superficially and then deeper throughout the body. The person being **Rolfed** participates by bringing his active attention to the area where the **Rolfer** is working, and by striving to use his body appropriately as he moves through the world thereafter.

Structural integration arose out of Dr. Rolf's belief that most people, even if they aren't "sick," could be more fully, vibrantly alive, and her resulting study of ways of enhancing human functioning led her to the following assumptions:

1. Each body exists in a field of forces to which it continuously responds in some way.
2. The body changes with amazing plasticity according to how it is used.
3. The whole body operates as a system: changes in one part lead to compensating changes throughout all parts.
4. Some changes make it harder for the body to deal with the forces acting on it.
5. The body functions best when it is in balance.

These assumptions, in turn, led Dr. Rolf to the following assumptions about therapy:

1. Force exerted toward an optimal (balanced) alignment, even if exerted only on the "surface" of the body, will ramify through the system and ultimately will evoke a better alignment of the *whole* body.
2. Work on the whole body is more effective than work on just one part, since local change is deeper and more enduring if it is preceded by work on more distant compensations.

Research on the effects of structural integration has just begun. So far it indicates what seems to be significant changes in neural activity (toward a pattern in which "when the muscle works, it works; when it rests, it rests") and brain functioning (toward more spontaneous, open reaction to the environment and the body's internal cues). Subjective reports from people who have been **Rolfed** include the fact that they stand straighter, that physical changes have taken place which they like (they have more energy, feel better about their bodies, etc.), that they feel more "open" and "aware," that favorable psychological changes have taken place, and that their lives in general have improved. some also report having re-experienced and afterward having felt released from an early traumatic experience.

For further information and free consultation in Billings, please contact Gary A. Robinson, Certified Rolfer.

Exhibit 14
2/21/85 HB 855

MONTANA CHAPTER

OF THE

AMERICAN PHYSICAL THERAPY ASSOCIATION

February 21,1985

To: The Members of the House Committee of Business:

As representative of the Montana Chapter of the American Physical Therapy Association, I submit the following statement of opposition to House Bill 855, regulation and licensing of persons practicing rolfing:

Rolfing is a form of massage. The Montana legislature previously allowed "the sun to set" on the Board of massage therapists indicating that it is not a profession which requires regulation, or from which the PUBLIC needs protection. Why, then, should this form of massage or any other form of massage be regulated by the State?

To permit licensure of these individuals would establish recognition of them as professionals in the health care field, and as health care providers. As such, they will seek reimbursement from their clientele, and from third party payers, such as worker's compensation. Without this recognition by the State, third party reimbursement will not be possible.

There has been no medical research to substantiate or validate this so-called science of rolfing. The training of these persons is insufficient in the areas of management of the physiological, psychological, and medical conditions they treat. In addition, this training can be completed in one year or less.

It must be remembered that massage, in any form, is only an integral part of a comprehensive conservative management treatment program. It is only a portion of an overall approach to reduce muscle spasm, promote muscle strength, stretch tightened structures, and must be used in conjunction with therapeutic exercise. To employ it alone can bring no permanent relief or restructuring of tissues.

They are not considered an allied health profession by any other accrediting health professional orginization. They are simply individuals who have acquired a skill, which does not necessarily require a college degree.

With so few rolfers in the State, regulation of these people by a board would probably require State funds and result in extremely high licensure fees. Is the State prepared to support such a board? Is worker's compensation willing to pay for such quasi-medical care?

Finally, because of the insufficient education, lack of a scientific research base and absence of recognition by other health professions, we feel that to license rolfers could potentially lead to greater expense to third party payers, physical injury and increased confusion regarding the health care system to the public.

Thank you for your time and consideration in this matter.

Mary Mistal, R.P.T.

Mary Mistal, R.P.T.
Vice-President of the Montana
Chapter of the APTA

Exhibit 15
2/21/85
HB 855
Submitted by: Judy Olson

Montana Nurses' Association

2001 ELEVENTH AVENUE (406) 442-6710

P.O. BOX 5718 • HELENA, MONTANA 59604

The Montana Nurses' Association opposes HB 855.

The practice of professional Nursing means the performance for compensation of services requiring substantial specialized knowledge of the biological, physical, behavioral, psychological and sociological sciences and of nursing theory as a basis for the nursing process. The nursing process is the assessment, nursing analysis, planning, nursing intervention, and evaluation in the promotion and maintenance of health; the prevention, casefinding, and management of illness, injury, or infirmity; and the restoration of optimum function. The term also includes administration, teaching, counseling, supervision, delegation, and evaluation of nursing practice and the administration of medications and treatments prescribed by physicians, dentists, osteopaths, or podiatrists authorized by state law to prescribe medications and treatments. Each registered nurse is directly accountable and responsible to the consumer for the quality of nursing care rendered.

On a regular and daily basis registered nurses typically perform several treatments and procedures which are in compliance with the Montana Nurse Practice Act but which would conflict with the intent of the legislation before you today.

Because skin stimulation is critical to the healing process of many disease conditions, nurses carry out the following nursing care procedures:

> The skin is stimulated through bathing; therapeutic massage; application of lotions, creams, or medications directly to the skin; hot and cold and wet and dry body massage and soaks; wound care; active and passive range of motion exercises; postural drainage exercises with the assistance of the patient; and Trans-Electrode Nerve Stimulation (TENS) for the treatment of pain through skin stimulation.

As you can see, registered nurses perform several of the therapies identified in the legislation presented today as a large component of the practice of professional nursing. I urge you to give this bill a DO NOT PASS recommendation.

Respectfully submitted,
Judy F. Olson

Exhibit 16
2/21/85
HB 863
Submitted by: Jim Kembel

TESTIMONY ON HB 863

BUILDING CODES DIVISION
DEPARTMENT OF ADMINISTRATION

The Department has concerns with HB 863 as currently proposed.

-Since the water heater thermostat is easily changed, there is no logical way to insure compliance with the provisions.

-Since insuring compliance is a problem, the state who is responsible for enforcement, assumes liability should an injury occur.

-In order to attempt to reduce the state's liability, the Department would have to:

--Monitor changes in rental tenants, which would be an enormous task.

--Monitor utility companies to make sure residential customers are receiving the required notice.

--Monitor manufacturers and suppliers to make sure thermostats are properly set and required tags are attached.

--If a good faith effort is not made to enforce the above requirements, the state could be held liable. Therefore, the initial installation inspection would not be an adequate enough effort and the Department would need to increase funding and staff to carry out the intent of the bill.

With the above concerns in mind, the Department would like to see lines 15-19, page 5, struck in their entirety from the bill.

that cannot be set as low as that temperature, to prevent severe burns and reduce excessive energy consumption; and

(2) stating that, upon occupancy of a new tenant, the thermostat of a water heater furnished in a leased or rented residential dwelling must be set no higher than 120 degrees F or the minimum setting on a water heater that cannot be set as low as that temperature, pursuant to [section 3].

Section 5. Manufacturer's product tag. The manufacturer of a water heater offered for sale or installed after [the effective date of this act] shall attach a tag to the thermostat access plate or immediately adjacent to the exposed thermostat. The tag must state that thermostat settings above the preset temperature may cause severe burns and consume excessive energy.

~~Section 6. Administration and enforcement. The department of administration shall administer and enforce the provisions of [this act]. However, nothing contained in [this act] requires any inspection other than those provided for in 50-60-510 or other applicable laws.~~

Section 7. Codification instruction. Sections 1 through 6 are intended to be codified as an integral part of Title 50, chapter 60, part 5.

-End-

WITNESS STATEMENT

Name Jo Brunner — Committee On B & L

Address 1469 Kodiak Pl — Date 2/21

Representing Cattlefeeders — Support X

Bill No. 597 — Oppose

Amend

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. We support this House Bill 597-
We support the deletion in Sec 1 lines 17-18-19
2. for that it puts the buyers of ag products into
the same category as buyers of non agricultural
3. products.
It clarifies law puts the certain burden of
4. discovery and risk of undisclosed loss on the
buyer.
We ask you concur on HB 597

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

FORM CS-34
1-83

RICHARD A. NELSON, M.D.
301 North 27th Street, 3rd Floor
P.O. Box 1152
Billings, Montana 59103
Ph. (406) 248-1630

Diplomat American Board of Neurology and Psychiatry

February 7, 1985

TO WHOM IT MAY CONCERN:

RE: ROLFING PRACTICES ACT

By way of introduction, I am a Neurologist practicing out of Billings, Montana, as well as Cody, Wyoming and have large numbers of patients with skeletal, spinal, and head injuries who suffer various forms of myofascial pain syndrome, muscular and postural imbalances. I have personally utilized the rolfing technique in a number of my patients following their physical therapy programs, and find it to be very useful as an adjunctive technique to our usual modalities in therapy in helping to correct postures, deal with conditions such as thoracic outlet, temporomandibular joint disease, myofascial pain syndromes, muscular spasms, skeletal imbalances associated with nerve root irritation, from whatever cause. This technique is, infact, written up as being useful for these purposes in the recent textbook entitled MYOFASCIAL PAIN AND DYSFUNCTION, The Triggerpoint Manual by Janet Travell, M.D. and David G. Simons, M.D. This is a recently published textbook and reprinted in 1984. Janet Travell is the emeritus clinical professor of medicine at George Washington School of Medicine, Washington, D. C., and David G. Simons is the clinical professor Department of Physical Medicine and Rehabilitation at the University of California at Ervine. Consequently, there is plenty of precedence for this technique being utilized as an adjunctive technique in the treatment of myofascial and muscular disorders.

My personal experience with it and with the practitioner who is presently practicing here in Billings, Gary Robinson, has been quite good. I feel that it is a useful technique which helps some of our patients avoid having to have invasive techniques done and diagnosis and treatment. Consequently, I am highly in favor of licensure of the rolfing deep massage technique so that we may protect ourselves from people who may be claiming to do this particularly technique who have not infact, had the training and certification in same. Let me make it clear that the rolfing technique is not expected to take the place of any of the standard physical therapy modalities which one ordinarily uses first and/or in conjunction with the rolfing techniques.

Sincerely,

Richard A. Nelson

RICHARD A. NELSON, M.D.

State of Montana }ss
County of Yellowstone }

Subscribed and sworn to before me this 11th day of February, 1985.

Notary Public

RN/ch

PONDEROSA COUNCIL OF CAMP FIRE

2700 Clark Street • Missoula, Montana 59801 • (406) 542-2129

A United Way Agency

February 20,1985

Re: Mandatory Water Heater Setting

As a representative of Camp Fire I have been serving on a "Children's Health Task Force" in Missoula. Following a survey by the Missoula Health Department and a Symposium with people involved in youth services; we have attempted to identify constructive actions which would meet safety and health needs. Preventative care, information and assistance have been high priority topics with parents.

Among preventative measures is the possibility of preventing accidental scalding and burns through lower water heater settings. Since many people give little attention or maintenance to water heaters, a pre-setting at the retailers would assist families in preventing scaldings. Education through various sources would hopefully prompt existing water heater owners to reset their appliances and new purchasers to keep theirs at 120 degrees.

The mandate to retailers to preset water heaters should not include punitive measures. However it should include periodic checks from health or building inspectors and a letter requesting compliance if necessary. The educational process would seem to be simpliest carried out by utilities and they could determine how they do it as long as they include the information yearly.

A by-product of lower water heater settings should be some energy conservation. A recent phamplet from the Montana Power Company indicates on page 6 that a 120 degree setting can save money if a family has been operating at higher settings previously.

All factors considered, a mandatory water heater setting at the point of sales could be a contributor to a familiy's health and budget.

Sincerely,

Jennifer Cote

Jennifer Cote
Executive Director
Ponderosa Council of Camp Fire

. . . . "To provide, through a program of informal education, opportunities for youth to realize their potential and to function effectively as caring, self-directed individuals responsible to themselves and to others; and, as an organization, to seek to improve those conditions in society which affect youth."

WATER HEATERS

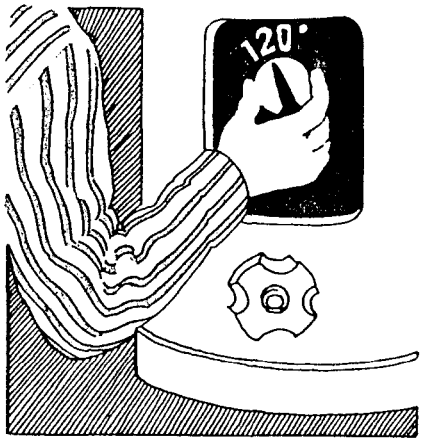
Water heaters are the second largest energy user in your home. These suggestions can reduce their energy usage and save you dollars.

Energy savings: a matter of degrees

One cost-free way to save energy is by lowering the thermostat setting on your water heater. Most water heaters have settings ranging from 100° to 155° F, often listed as Low-Medium-High settings. Your water heater may be set at a higher temperature than you need — most homes need no higher than medium or about 120°.

If you use a dishwasher, 140° F temperature is recommended to assure its efficiency unless you have a late-model (since 1980) energy-saver dishwasher. The energy-saving short cycle selections can save up to 25 percent of water heating energy costs. And an "air dry" selector, that automatically shuts off heat during the dry cycle, can save up to 30 percent of the electricity used by the dishwasher. Your clothes washer can use cooler water temperatures, too, especially with today's detergents and fabrics.

Water temperature settings will vary according to each household's needs. You should adjust the temperature setting on your water heater as low as possible to maintain enough hot water for your needs. The important thing to remember is that the lower the water heater thermostat, the higher the savings.



More energy savers

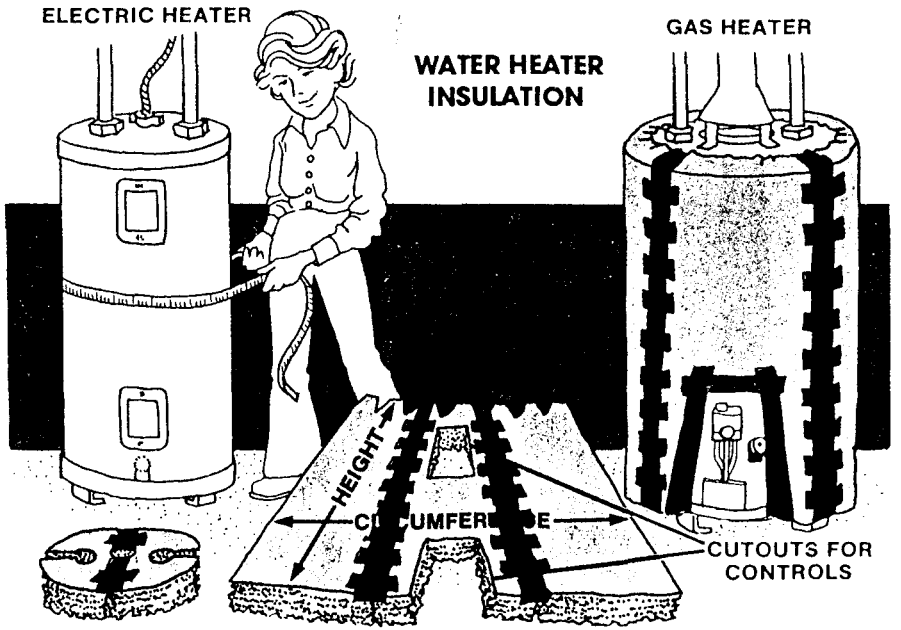
Regular maintenance of your water heater helps save energy. Sediment buildup on the bottom of your hot water heater interferes with efficient operation. Drain a bucket of water from the bottom of the tank at least every three months to keep it more energy efficient. To drain the tank, open the plug at the side of the tank and allow the water to run until clear — one or two buckets of water will do. Do not force the valve open.

Insulating your water heater stops heat loss through the pipes and heater tank. Those losses make the water heater work harder to maintain its temperature setting. If your water heater is located in an unheated area, such as a crawl space, unheated basement, attic or garage, it's especially important to insulate.

Insulation kits for pipes and hot water tanks are available for purchase at local lumber yards, hardware stores and conservation centers. For an electric water heater, wrap the insulation around the tank and tape it in place, making a generous overlap, and leaving a sufficiently large opening around the access panels and control area. **When wrapping a gas water heater, call Montana Power for safety information. It can be dangerous if you cover burner access, the top of the tank, flue draft diverter or block any air vents.** (When insulating, keep in mind this is a good time to check and repair leaky hot water faucets.)

Insulating your water heater can give you important savings. If you add two inches of fiberglass insulation to an electric water heater, total energy consumption of the heater can be reduced about eight percent. Adding three inches of fiberglass insulation to the jacket of a gas water heater can reduce energy consumption from eight to nearly 24 percent depending on location of the heater.

Showers normally use less water than a bath, and hot water saved means energy saved. A shower flow restrictor or a new, more efficient shower head saves even more heated water. Check with your local plumber or hardware dealer, or ask Montana Power for a free shower flow restrictor.



VISITORS' REGISTER

BUSINESS AND LABOR COMMITTEE

BILL NO. House Bill 458 DATE 2/21/85

SPONSOR Representative Peck

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Jeffry M. Kirkland	2842 Festival Road Helena	✓	
Lobbyist	Bozeman, Mont.		
John Scully	MTB		✓

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

CS-33

VISITORS' REGISTER

BUSINESS AND LABOR COMMITTEE

BILL NO. House Bill 597 DATE 2/21/85

SPONSOR Representative Ellerd

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
James Miller	Redyard, MT	✓	
K.G. Hageman	Laurel, Mont	✓	
ELROY LETCHER	MT Council of Co-op Elevators		X
Russell Benson	Chinook, Mont.	✓	
Thomas Peterson	Wilsall, MT	✓	
Dan Place	Townsend MT	✓	
DENNIS CASEY	Kansas City	✓	
JOHN CADBY	HELENA		X
J. Brenner	Helena Cattlefeeders	✓	
Robin Marlatt	Bozeman, Mont.	X	
BILL ASHER	BOZEMAN MONT.	X	
JIMMIE L. WILSON	TROUT CREEK	✓	
Les Graham	Dept. of Livestock	✓	
Lavina Lubinus	WIFE	✓	
John Hill	MTA		X
Marcia Davis for Don Treeman	Reavey Co.	X	
Marcia Davis for Glen McLean	Cargill Inc	X	
Mark Rasmussen	Mont. Grain Growers		X

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

BUSINESS AND LABOR COMMITTEE

BILL NO. House Bill 840 DATE 2/21/85

SPONSOR Representative Hanson

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
D VAN DEGRAFF	Helena		X

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

BUSINESS AND LABOR COMMITTEE

BILL NO. House Bill 852 DATE 2/21/85

SPONSOR Representative Harp

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
OPAL WINEBRENNER	Public Service Commission	✓ with Amendment.	
Russ Brown	Helena NPRC		
Jim Pain	Helena, Mont Coal Council	✓	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

BUSINESS AND LABOR COMMITTEE

BILL NO. House Bill 853 DATE 2/21/85

SPONSOR Representative Krueger

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Beck	Dept of Highways		✓
Eugene Finsterbusch	Helena	✓	
Louise Kuns	MT Land Title Assn & 107 Hawthorne	✓	
Jim Murray	Mont AFL-CIO	✓	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

CS-33

VISITORS' REGISTER

BUSINESS AND LABOR COMMITTEE

BILL NO. House Bill 855 DATE 2/21/85

SPONSOR Representative Garcia

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Jerry T. Loendorf	Helena, Mt		—
Mary MISTAL	BILLINGS, MT		✓
Steve Brown	Helena, Mt.		X
John W. McMahon M. C	Helena		X
Tom Margrave	Helena		✓
Shirley Miller	Dept of Commerce	No position	
Mary Lou Garrett	Pow Bureau / Comerica	✓	✓
Wilhelm Hepp	Bozeman	X	
Karen Anderson	Bozeman	✓	
Gary A. Oelman	Billings	✓	
Dick Larson	Missoula	X	
Don Evans	MISSOULA	X	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

BUSINESS AND LABOR COMMITTEE

BILL NO. House Bill 863 DATE 2/20/85

SPONSOR Rep. Hansen

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
H.S. Hanson	MTC - Helena		X
Walter F. Jackovich	Butte		X
DENNIS LANG		X	
Jim Kembel	Bldg Codes DOA	Amend	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.