MINUTES FOR THE MEETING
JUDICIARY COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

March 7, 1985

The meeting of the Judiciary Committee was called to order by Chairman Tom Hannah on Thursday, March 7, 1985 in Room 312-3 of the State Capitol.

ROLL CALL: All members were present with the exception of Rep. Gould who had previously been excused.

CONSIDERATION OF SENATE BILL NO. 57: Senator Max Conover, District #42, sponsor of SB 57, testified in its support. This is an act providing for the attachment of a donor's statement under the Uniform Anatomical Gift Act to the back of the motor vehicle operator's or chauffeur's license. A copy of Senator Conover's written testimony was marked Exhibit A and attached hereto. He also submitted a copy of some questions and answers about organ donations which was marked Exhibit B and attached. Also submitted was an article from the Daily Inter-Lake, Kalispell, dealing with the shortage of donated organs. See Exhibit C.

Also testifying was Larry Majerus, administrator of the Motor Vehicle Division of the Department of Justice, pointed out that the division opposed this bill in the Senate because they felt it was not at all workable. Mr. Majerus still has some concern with the bill which he expressed. He said they have a present system already in force. The division issues a separate donor card. On one side of the card, there is information stating what organs the donor would like to donate, and the required signatures, dates and witnesses are listed on the back side. He passed out several cards and driver's licenses for the committee's view. He said that the division will have difficulty getting the information that is needed on the license -- especially if a particular license already has a change of address or other restrictions already placed on the back of the card.

There being no questions from the committee, hearing closed on SB 57.

CONSIDERATION OF SENATE BILL NO. 91: Senator Joe Mazurek, District #23, sponsor of SB 91, testified. He submitted a section-by-section summary of the intent of SB 91 of which a copy was marked Exhibit D and attached hereto.

Senator Masurek stated that Sam Haddon, chairman of the Supreme Court Commission on the Rules of Evidence, had planned to be present to testify, but he was unable to do so because of conflict.

William F. Crowley, professor at the Montana Law School and also a member of the Evidence Commission, testified as a proponent to SB 91. He stated he was the principal draftsman of SB 91. He said this is one of the last of the sections of our civil procedure act. He said this system has not been looked at and updated yet. These statutes were passed before Montana was even a state. It is not so much that the present statutes are wrong as they are written in old-fashioned language and don't go over everything. If this bill passes, this will enable lawyers to go to the codes instead of caselaw and find all the basic rules there.

Pat Melby, representing the State Bar of Montana, testified that he supported the bill for all the reasons stated by Senator Mazurek and Professor Crowley.

Michael Abley, administrator of the Montana Supreme Court, stated that the court is very much in favor of this bill, and feel the bill is long overdue.

Karl Englund, representing the Montana Trial Lawyers Association, wished to go on record as supporting this legislation.

There being no further proponents or opponents, Rep. Mazurek closed by saying that SB 91 is a law student relief bill.

There were a few general questions asked, and the hearing on SB 91 was closed.

CONSIDERATION OF SENATE BILL NO. 60: Senator Joe Mazurek, District #23, sponsor of the bill, testified. He stated that this bill is a uniform act. It is replacing the existing Uniform Gifts to Minors Act with the Uniform Transfers to Minors Act. The Uniform Gift to Minors Act was adopted in Montana in 1957. The original Uniform Gifts to Minors Act applied to very limited types of property -- cash and securities. This bill updates the former law, modernizes it and makes it more useable in today's world. Senator Masurek pointed out the change the Senate made on page 1 by decreasing the age of 21 to 18 years because they felt it would present a conflict with the Montana Constitution which establishes the age of majority at 18 years of age. Senator Mazurek said that SB 60 has gone through substantial review. He further stated that the National Conference of Commissioners on Uniform State Laws feels that uniformity is important in this area.

Senator Mazurek pointed out that he received a letter from the State Bar of Montana which fully supports this legislation.

Dave Roberts, representing the Montana Banker's Association, wished to go on record as supporting this bill.

There being no further proponents or opponents, Senator Mazurek closed.

The floor was opened up for questions.

Rep. Keyser asked Senator Mazurek if under this Transfer to Minor's Act, we have in any way broadened any of these transfers to apply to out-of-state property or any property that is not in the state of Montana or to a resident in another state. Senator Mazurek said that it was the whole idea of this act. It essentially allows the transfer of any property to any place. The one question Senator Mazurek had is whether it would be dependent upon the existence of this act in another jurisdiction. He then referred to section 23 of the bill dealing with applicability. He said that if the state to where something is being transferred has either the old or new act, the transfer would be valid.

Following further general questions, hearing closed on SB 60.

CONSIDERATION OF SENATE BILL NO. 87: Senator Joe Mazurek, District #23, sponsor of SB 87, testified. This is an act to clarify the liabilities of general partners in a limited partnership and of a person who erroneously believes they are limited partners in a limited partnership. This bill allows for the adoption of amendments which the Uniform Law Conference has worked out with the Internal Revenue Service. The bill addresses two areas as brought out in sections 1 and 2. This is a measure which may affect the tax liability and liabilities of people who are involved in limited partnerships. Those are very frequently used in real estate developmental projects. Senator Mazurek stated that he hopes the committee will give SB 87 its serious consideration.

There being no questions, hearing closed on SB 87.

CONSIDERATION OF SENATE BILL NO. 5: Senator M. K. Daniels, District #24, sponsor of SB 5, testified. He stated the bill is most conveniently described in lines 9 through 31 of the first page.

There being no proponents or opponents of the bill, Senator Daniels closed.

John McMaster, attorney from the Legislative Council, explained the intent of the bill in layman's terms.

The floor was opened to questions.

Rep. Addy said that what the committee is dealing with here is the Legislative Council's ability to edit what the legislature does and therefore, in some minor way shift the meaning of the legislature's intent. Mr. McMaster said that it is a possibility. Rep. Addy asked Mr. McMaster if there is some place where the Council keeps a record of all the uncodified legislation. Mr. McMaster stated that as far as he knew, there is no record that can be counted upon absolutely. Rep. Addy did state that he feels the Council is headed in the right direction with this bill, but he is concerned with the editing of decisions.

Rep. Mercer stated that he shares Rep. Addy's concern. He stated that one thing he doesn't like about the Legislative Council is the fact that it is continually eroding more and more of the powers of the legislature and assuming those powers itself simply because it is more efficient to do so. Rep. Mercer wanted to know why some of these things that need to be pulled off the books can't be brought forward before the legislature and give us a chance to look at them and repeal them. Mr. McMaster pointed out the problems as a result of having to go through this process. Rep. Mercer said that the code doesn't always reflect what the legislature does.

Following further discussion on this matter, hearing closed on SB 5.

EXECUTIVE SESSION

An executive session was called at 10:20 by Vice-Chairman Dave Brown.

ACTION ON SENATE BILL NO. 5: Rep. Addy moved that SB 5 BE CONCURRED IN. The motion was seconded by Rep. Eudaily and discussed.

Rep. Addy feels this bill is a step in the right direction.

Rep. Mercer feels that if a law is going to be repealed, it should be brought before the legislature instead of having the Legislative Council do it. Rep. Krueger stated that he is also concerned with this.

Rep. Keyser stated that he has a problem with the retroactive provision of the bill.

Rep. Eudaily pointed out that this legislation is not something new. He said that during each session, the legislature has to deal with code revisions of this sort. He certainly doesn't view this as a crisis situation

Following further general discussion, the question was called on the BE CONCURRED IN motion, and the motion carried with Reps. Mercer, Cobb, Krueger and Keyser dissenting.

It was the chairman's intention to take action on SB 91, but Rep. Krueger requested a postponement in action because he wishes to prepare some amendments to the bill. Acting Chairman Dave Brown told Rep. Krueger to have the amendments prepared by tomorrow morning so action can be taken at tomorrow's hearing.

Likewise, action will be delayed on SB 60 so Brenda Desmond can research a question brought out at today's hearing on the 21 year old age.

ACTION ON SENATE BILL NO. 87: Rep. Hammond moved SB 87 BE CONCURRED IN. The motion was seconded by Rep. Darko and carried unanimously.

ACTION ON SENATE BILL NO. 57: Rep. Darko moved that SB 57 BE CONCURRED IN. The motion was seconded by Rep. Addy and discussed.

Rep. Keyser doesn't see the big need for the bill. He brought up the problems that Mr. Majerus had with the bill in that restrictions and change of addresses would be covered up if this information were placed on the question of the cost factor involved.

Rep. Krueger argued that this procedure should be made available to those people who wish to be donors, and passage of this legislation will increase the awareness.

Rep. Eudaily is also concerned with placing this information on the back of a license and whether or not it can be done.

Rep. Bergene had a question of whether or not the next of kin must be notified. Brenda Desmond, committee researcher, later informed Rep. Bergene that the next of kin's signature is not needed if the donor's signature is on the donor card.

It was Rep. Addy's opinion that the card could be redesigned to include all the information that is needed.

Following further discussion, the question was called, and the motion for a BE CONCURRED IN recommendation carried on voice vote with Rep. Eudaily, Keyser, Montayne, Grady and Poff dissenting.

ACTION ON SENATE BILL NO. 3: Rep. Mercer moved that SB 3 BE CONCURRED IN. The motion was seconded by Rep. O'Hara and a lengthy discussion followed.

Rep. O'Hara feels the legislature will be going against the will of the people of this state if SB 2 and SB 3 are not passed. He feels very strongly that lives will be saved as a result of this legislation.

Rep. Mercer feels that the legislature will be acting irresponsibly if this issue is put out before the people to decide. He moved to amend SB 3 by reinstating the original language. He feels that it is inappropriate to remove the drinking age from the constitution. He feels that it will seriously endanger the chances of this particular consitutional amendment from passing if the age is not left in there. Therefore, Rep. Mercer made a formal motion to amend on page 1, line 20 by reinstating the original language and leaving the word "PURCHASING" in the amendment. His motion also included establishing the legal drinking age of"not more than 21". The title of the bill would also be changed to conform with this idea. The motion was seconded by Rep. O'Hara and discussed.

Rep. Miles spoke against the motion to amend as she prefers the present language.

Rep. Addy said that the existing language in the bill is simply making it a statutory provision rather than a constitutional provision. He feels that if the language is changed, and when this bill goes back to the Senate for reconsideration, he feels it won't get any more than 28 votes. Rep. Addy considers the drinking age is one of the most arbitrary, silly things that we have done. He said that by setting it at 25, he would be more likely to vote for it than otherwise. He said that when we are talking about a right when referring to the drinking age issue, you start discriminating against people because of who they are rather than what they do and that is un-American.

Rep. Krueger stated that he can support the bill as originally presented but cannot support the bill if amendments are adopted. Rep. Krueger is not in favor of mandating once again the 21 year old age in the constitution. We have changed the constitution three times in a 10-year period.

Rep. Keyser agrees with Rep. Krueger. He said the testimony showed that Montana is one of the few states that has a drinking age built into the consitution. He supports the language as is because it says it will take it out of the consitution, and it will allow it to be decided by the legislature. He feels that's where it should have been originally instead of being placed in the constitution.

Rep. Mercer responded by saying he can't ever see the drinking age raised over the age of 21. By passing this initiative out the way it is, he feels that we would be seriously jeopardizing the possibility of it being approved by the voters.

Rep. Eudaily stated that he had a problem with the amendment language or the language in the bill as to whether they meet the federal requirements. In one case, we are saying "not more than 21" and in another case, we are not

putting in any age at all. We are leaving it up to future action of the legislature or by initiative. He thought the federal mandate required Montana to establish the age at 21 or else we would lose our federal funds.

Rep. Hannah pointed out that SB 2 is the bill that does. SB 3 changes the constitution, and SB 2 is the actual statutorial change.

Following further discussion, the question was called on Rep. Mercer's amendments, and the motion failed on a voice vote.

Rep. Miles moved to adopt the amendments as proposed by Mike Males. (See attachement Exhibit E.) The motion was seconded by Rep. Brown and discussed.

Rep. Keyser stated that he doesn't like the "consuming" language but would prefer the language be changed to "public consumption" on line 20, page 1 of the bill. Rep. Keyser made a substitute motion to this affect to adopt that particular language.

The motion was seconded by Rep. Brown and further discussed.

Rep. Hannah is concerned that the amendments are leading us away from the whole intent of the bill. He feels that it may make the bill confusing instead of clarifying it.

Rep. Keyser withdrew his motion to amend and further spoke against Rep. Miles' amendment.

Rep. Miles made a substitute motion to include the language "public consuming" in her amendment. The motion was seconded by Rep. Krueger and further discussed. Rep. Krueger feels that this amendment clarifies the law.

Rep. Mercer spoke against the substitute motion. He said that we are not passing a law -- we are putting out a constitutional amendment which will authorize the legislature to regulate the purchasing, consuming, and possessing of alcoholic beverages.

Following further discussion, the question was called, and the motion to adopt Rep. Miles' amendments (in addition to her substitute motion to include "public comsumption") failed 5-11. (See roll call vote.)

The question called on the original BE CONCURRED IN motion, a roll call vote was taken, and the motion carried 16-2.

ACTION ON SENATE BILL NO. 2: Rep. Keyser moved that SB 2 DO NOT PASS. The motion was seconded by Rep. Brown and discussed.

Rep. Keyser wants to see what decision the public makes on the referendum, and he feels like there is plenty of time for the next session to come back in and pass whatever law is necessary to conform to the vote of the public at that time.

Rep. Brown spoke on the bill. He said the statistics given by Mr. Males were essentially the same ones the proponents of this bill gave except he went into them in a lot more depth. The most striking feature of his testimony was that in those states where the age limit was raised, the accident rates also went up. He feels the biggest part of the problem as with other areas is the breakdown of the family unit and in the responsibility of the adults that are caring for the raising of their children. He feels that by legislating this bill there will be no effect on the problems the proponents of the bill brought out. Passage of this bill is not essential as to whether we keep or lose $17.1 million. The federal statute doesn't take effect until FY87 which is October of 1986. The federal language allows for passage in the states during the year that the law takes effect to comply and regain those funds if it is necessary. He referred to the South Dakota lawsuit that is presently filed challenging the federal government on this issue. He feels that SB 2 should be defeated.

Rep. Mercer doesn't see where they are going to get any clearer of an indication from the public as to what they want the drinking age to be. He suggested that SB 2 be amended into a referendum on the drinking age, too, so that when the constitutional amendment goes before the voters there will be a referendum in the statutes that asks the question if the public wants the age established at 21 or if they don't want it established at 21. He feels that a lot of people could be confused otherwise. He doesn't see how they can tell from the vote on SB 2 of the people's real wish as to what the drinking age should be.

Rep. O'Hara moved that the bill BE TABLED so that the committee can further work on the issue -- especially the suggestion brought up by Rep. Mercer. The motion was seconded by Rep. Brown and carried 12-4. (See roll call vote.)

ADJOURN: A motion having been made by Rep. Hammond, and having been seconded, the meeting adjourned at 11:55 a.m.

Tom Hannah
TOM HANNAH, Chairman

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 3/7/85

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

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE March 7, 1985 BILL NO. SB 2 TIME 11:55 a.m.

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

Marcene Lynn
Secretary

Tom Hannah
Chairman

Motion: Rep. O'Hara moved that SB 2 BE TABLED. The motion was seconded by Rep. Brown and carried 12-4.

STANDING COMMITTEE REPORT

xFebruary March 7 19 85

MR. Speaker

We, your committee on Judiciary

having had under consideration Senate Bill No. 3

Third reading copy (Blue color)

AMEND CONSTITUTION TO RAISE LEGAL DRINKING AGE TO 21

Respectfully report as follows: That Senate Bill No. 3

BE CONCURRED IN
ADOPTED

REP. TOM HANNAH, Chairman.

COMMITTEE SECRETARY

STATE PUB. CO.
Helena, Mont.

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE March 7, 1985 BILL NO. SB 3 TIME 11:45

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

Marcene Lynn
Secretary

Tom Hannah
Chairman

Motion: Rep. Miles moved to adopt amendments proposed by Mike Males at the hearing. (See Exhibit E) This amendment also includes the language "public consumption" be added on page 1 of line 21 in addition to the title of the bill. The motion was seconded by Rep. Brown and failed 5-11.

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE March 7, 1985 BILL NO. SB 3 TIME 11:45

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

Marcene Lynn
Secretary

Tom Hannah
Chairman

Motion: Rep. Mercer moved that SB 3 BE CONCURRED IN. The motion was seconded by Rep. O'Hara and carried 16-2.

STANDING COMMITTEE REPORT

March 7 19 85

MR. Speaker

We, your committee on Judiciary

having had under consideration Senate Bill No. 5

Third reading copy (Blue color)

PRECEDENCE OF CHANGED MCA OVER REDUNDANT UNCODIFIED PROVISION OF LAW

Respectfully report as follows: That Senate Bill No. 5

BE CONCURRED IN

~~DO PASS~~

Rep. Tom Hannah, Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

STANDING COMMITTEE REPORT

March 7 19 85

MR. Speaker

We, your committee on Judiciary

having had under consideration Senate Bill No. 57

Third reading copy (Blue color)

ANATOMICAL GIFT DONOR'S STATEMENT ON REVERSE OF DRIVER'S LICENSE

Respectfully report as follows: That Senate Bill No. 57

BE CONCURRED IN
~~DO PASS~~

REP. TOM HANNAH Chairman.

COMMITTEE SECRETARY

STATE PUB. CO.
Helena, Mont.

STANDING COMMITTEE REPORT

March 7 19 85

MR. Speaker

We, your committee on Judiciary

having had under consideration Senate Bill No. 87'

Third reading copy (Blue color)

LIABILITY OF PARTNERS AND OTHERS UNDER UNIFORM LIMITED PARTNERSHIP ACT

Respectfully report as follows: That Senate Bill No. 87

BE CONCURRED IN

DO PASS

REP. TOM HANNAH, Chairman.

COMMITTEE SECRETARY

STATE PUB. CO.
Helena, Mont.

EXHIBIT A
3/7/85
SB 57

Senate Bill 57 - Introduced by Max Conover

A Bill for an Act Entitled: An act providing for the attachment of a Donor's Statement under the Uniform Anatomical Gift Act to the back of the Motor Vehicle Operator's or Chauffeur's license; Amending Section 61-5-301, and 72-17-204, MCA.

If Senate Bill 57 is passed it would require that the Examiner's Office, of the Montana Department of Motor Vehicles, provide persons renewing their, or getting a duplicate license, a brochure explaining the organ donation program.

Along with the information on organ donors, the brochure will contain a sticker and people wishing to become a donor can fill out the sticker and attach it to the back of their driver's license. If a person no longer wishes to be an organ donor, he can take the sticker off the back of his license or just put an X through the sticker.

The cost of each brochure would be approximately 10 cents for FY 1986 and FY 1987.

Currently persons wishing to become organ donors must request it when renewing or getting a duplicate license. The Examiner's office will mark a box on the driver's license and give the donor a card to fill out and carry separately from the driver's license.

Enacting Senate Bill 57 into law would make people aware of the opportunity to donate their organs after death in an effort to save another person's life. And, in a time when the American Council on Transplantation says there is a "critical shortage" of donated human organs, the passage of this bill is even more vital.

Senate Bill 57 puts all donor information on one document, the driver's license. This can be a real time saver when every second counts in a human organ transplant.

If just one more life is saved by the new organ donor procedures, SB 57 will have done its job.

EXHIBIT B
3/7/85
SB 57

ORGAN DONATION - THE GIFT OF LIFE

Suppose you were the only one who had an opportunity to save someone else's life - or give the give of sight to a blind person, or the gift of good health to a person with an incurable chronic illness. What would you do?

You may not think you will ever have that opportunity - but you do. You now have the opportunity to donate organs and tissues such as kidneys, corneas, and heart...after death for transplantation, therapy, legal medical research and education.

All that is necessary is to properly complete, sign and have witnessed an organ donor card, which is available in the driver's license examining office. You also can have the examiner indicate in the appropriate place on the front of your license to look for an organ donor card. The card, when properly witnessed acts as a "pocket will" and should be carried with you at all times. You also should make your wishes known to your next of kin because, in most circumstances, your next of kin will be asked for permission to carry out your wishes. Also it may be necessary for your family to alert the attending physician or other hospital personnel of your wish to be a donor.

Organ donation is a deeply personal decision which only you can make. However the time to think about it is now. You can always change your mind later and throw away the donor card. If you wish to donate, be sure to have the driver's license examiner indicate your wish in the appropriate box on the front of your license. Also you should pick up and sign a donor card while you are there. Otherwise it may be forgotten, and the opportunity to give life, sight, or health to another person may be lost.

(Box encloses all questions & answers)

Some Questions and Answers About Organ Donation

1. What does the donor card look like?

   Printed below are the two sides of the donor card.

UNIFORM DONOR CARD

OF _____
Print or type name of donor

In the hope that I may help others, I hereby make this anatomical gift, if medically acceptable, to take effect upon my death. The words and marks below indicate my desires.

I give: (a) _ any needed organs or parts
(b) _ only the following organs or parts

_____
Specify the organ(s) or part(s)

for the purposes of transplantation, therapy, medical research or education;
(c). _ my body for anatomical study if needed

Limitations or special wishes, if any:

Signed by the donor and the following two witnesses in the presence of each other:

_____ _____
Signature of Donor Date of Birth of Donor

_____ _____
Date Signed City & State

_____ _____
Witness Witness

This is a legal document under the Uniform Anatomical Gift Act or similar laws.

For further information consult your physician

National Kidney Foundation of Rocky Mt. Region, Inc.
1801 South Bellaire St. #301
Denver, Colorado 80222
(303) 759-5151

2. Is there any age limit for donors?

Anyone 18 years of age may be a donor. A person under 18 may become a donor if parents or a legal guardian gives permission.

3. Is there a need for organ donors?

Yes. A great need. More than 8,000 patients in the country are waiting for a kidney transplant, but only approximately 2,000 will receive one this year because of the shortage of suitable organ donors. The need for donated eye tissue is equally critical. A recipient often must wait for months before eye tissue is available. Skin is needed for severely burned patients, and for patients requiring reconstructive surgery. The need for other organs is increasing as transplantation technique becomes more advanced.

4. What organs and tissues can be used?

Thousands of people are in need of kidneys, hearts, livers, corneas, skin for severe burns, middle ear drums and ear bones and pituitary glands which supply a vital growth hormone. Other parts of the body, including the lungs, pancreas, bones, tendons, bone marrow and cartilage have been transplanted with varying degrees of success.

5. How soon after death must kidneys, eyes and skin be removed from the donor?

Kidneys must be removed immediately after death. Eyes should be removed within four to six hours. Skin should be removed within eight to ten hours after death.

6. Who will receive my donation?

Your donation will be given to the person who needs it most and who most closely matches the donor. Sex and race are not factors.

7. Does a history of poor health rule out organ donation?

Not necessarily. All eyes are acceptable. Wearing glasses has no bearing on the usefulness of corneas. Very few causes of death rule out skin donation. Kidneys are not accepted from people with a history of cancer, prolonged untreated high blood pressure or diabetes. Other cases are evaluated individually by the physician. If you are interested in donating your organs, by all means, sign the donor card.

8. Can I donate my entire body for anatomical study and research?

Yes. But you must contact your local medical school and make separate arrangements. In most cases, it is not possible to donate both your organs and your body. Eyes are an exception to this (usually). Requirements vary from institution to institution.

9. Can I donate my organs while I am alive?

No, except in special cases, when one member of the immediate family may donate one of his or her kidneys to another member. Otherwise, donations are carried out only after death.

10. Is there any conflict between saving my life and using my organs for transplantation?

Definitely not, since organ donation never occurs until after death is certified and the certifying physicians cannot be members of any transplant team.

11. At the time of death, who should be notified that the deceased is to be a donor?

Next-of-kin should notify the attending physician or head nurse as soon as the doctors indicate death is imminent. They will make necessary arrangements.

12. Does organ removal affect burial arrangments or disfigure the body?

No. The removal of organs or tissues will not interfere with customary funeral or burial arrangements. The appearance of the body is not altered.

13. Do Churches approve of organ donation?

Yes, all major religious faiths approve and support organ donation. If you have any questions in this regard, you should consult with your religious leader.

14. Do I have to mention organ donation in my will?

No. By the time a will is read it is too late to make use of the organs. You should be sure your legal next-of kin and physician are aware of your interest in organ donation.

15. Is there any charge to my family for organ donation?

No.

16. Can I change my mind later?

Yes. Simply tear up the card. Nothing else is necessary.

17. What is the present status of organ transplantation?

Advances in medical science now make it possible to replace a variety of malfunctioning human organs. For instance since 1954, thousands of kidney transplants have taken place. Techniques for transplanting kidneys and corneas are currently the most advanced. Sight restoring cornea transplants are 90% successful, and kidney transplants are 50% to 100% successful, depending on the closeness of the donor matching.

Progress is also being made in overcoming transplantation problems connected with the liver, pancreas, heart, bone and other tissue. Skin for severe burn cases, middle ear drums and ear bones and pituitaries which supply a vital growth hormone are also among the most successfully transplanted organs and tissue.

18. What does the future hold?

As the problem of organ rejection comes under better control and as techniques for tissue-typing and organ preservation are improved, kidney and other tranplants will become increasingly feasible. Thus thousands of people who might otherwise die will live.

19. What else can I do to advance this life-preserving program?

Acquaint others with the possibility of organ donation. The more donors available, the more this new and important medical advance can be used to benefit humanity.

20. How do I become a donor?

When applying for, or renewing your driver's license or identification card follow the instructions below:

a) Tell the examiner that you wish to be an organ donor.
b) Ask the examiner to indicate your wish by marking the organ donor box on the front of your license.
c) The donor card must be witnessed by two people. It is best to have your family witness, however driver's license examiners may witness the card if you wish.
d) Carry the card with you at all times and inform next-of-kin of your wishes to be a donor.

EXHIBIT C
3/7/85
SB 57

The Daily Inter Lake, Kalispell, Montana, Friday, February 1, 1985—A-5

Shortage of donated organs 'critical'

WASHINGTON (AP) — A "critical shortage" of donated human organs means thousands of Americans still can't get needed kidneys, bone marrow or tissue despite breakthroughs in organ transplants, the American Council on Transplantation says.

Members of the private group, which is holding a two-day conference here, say they are hoping new publicity efforts — coupled with a just-beginning national program to register those needing transplants — will help raise the nation's awareness of the situation.

Aside from the still-limited field of heart transplants, the private council said that:

—Although 6,000 Americans got kidney transplants in 1983, more than half the people waiting did not receive them because of a shortage of available organs.

—Only 163 liver transplants were performed in 1983, though about 8,000 people would have benefited from them.

—Though 20,000 cornea transplants were performed, the same number of people were left waiting.

ending September 30, 1985, and $132,000,000 for the fiscal year ending September 30, 1986, and the total of all obligations for highway safety programs carried out by the Federal Highway Administration under section 402 of title 23, United States Code, shall not exceed $10,000,000 per fiscal year for each of the fiscal years ending September 30, 1985, and September 30, 1986.".

SEC. 3. (a) The sixth sentence of section 402(c) of title 23, United States Code, is amended by striking out the period at the end thereof and inserting in lieu thereof the following: ", except that the apportionments to the Virgin Islands, Guam, and American Samoa shall not be less than one-quarter of 1 per centum of the total apportionment.".

(b) Section 401 of title 23, United States Code, is amended by striking out ", except that all expenditures for carrying out this chapter in the Virgin Islands, Guam, and American Samoa shall be paid out of money in the Treasury not otherwise appropriated." and inserting in lieu thereof a period.

23 USC 401 note.

(c) The amendments made by subsections (a) and (b) shall only apply to fiscal years beginning after the date of enactment of this Act.

Drugs and drug abuse.

SEC. 4. (a) Section 408(a) of title 23, United States Code, is amended by inserting "or a controlled substance" immediately after "alcohol".

(b) Section 408(c)(1) of title 23, United States Code, is amended by inserting "and controlled substance" immediately after "alcohol".

(c) Section 408(f) of title 23, United States Code, is amended—

(1) by striking the period at the end of paragraph (7) and inserting in lieu thereof "; and"; and

(2) by adding at the end thereof the following:

"(8) for the creation and operation of rehabilitation and treatment programs for those arrested and convicted of driving while under the influence of a controlled substance or for the establishment of research programs to develop effective means of detecting use of controlled substances by drivers.".

Grants.

SEC. 5. Section 402 of title 23, United States Code, is amended by adding at the end thereof the following:

23 USC 402.

"(k)(1) Subject to the provisions of this subsection, the Secretary shall make a grant to any State which includes, as part of its highway safety program under section 402 of this title, the use of a comprehensive computerized safety recordkeeping system designed to correlate data regarding traffic accidents, drivers, motor vehicles, and roadways. Any such grant may only be used by such State to establish and maintain a comprehensive computerized traffic safety recordkeeping system or to obtain and operate components to support highway safety priority programs identified by the Secretary under this section. Notwithstanding any other provision of law, if a report, list, schedule, or survey is prepared by or for a State or political subdivision thereof under this subsection, such report, list, schedule, or survey shall not be admitted as evidence or used in any suit or action for damages arising out of any matter mentioned in such report, list, schedule, or survey.

"(2) No State may receive a grant under this subsection in more than two fiscal years.

"(3) The amount of the grant to any State under this subsection for the first fiscal year such State is eligible for a grant under this subsection shall equal 10 per centum of the amount apportioned to ch State for fiscal year 1985 under this section. The amount of a

grant to any State under this subsection for the second fiscal year such State is eligible for a grant under this subsection shall equal 10 per centum of the amount apportioned to such State for fiscal year 1986 under this section.

"(4) A State is eligible for a grant under this subsection if—

"(A) it certifies to the Secretary that it has in operation a computerized traffic safety recordkeeping system and identifies proposed means of upgrading the system acceptable to the Secretary; or

"(B) it provides to the Secretary a plan acceptable to the Secretary for establishing and maintaining a computerized traffic safety recordkeeping system.

"(5) The Secretary, after making the deduction authorized by the second sentence of subsection (c) of this section for fiscal years 1985 and 1986, shall set aside 10 per centum of the remaining funds authorized to be appropriated to carry out this section for the purpose of making grants under this subsection. Funds set aside under this subsection shall remain available for the fiscal year authorized and for the succeeding fiscal year and any amounts remaining unexpended at the end of such period shall be apportioned in accordance with the provisions of subsection (c) of this section.".

SEC. 6. (a) Chapter 1 of title 23, United States Code, is amended by adding at the end thereof the following new section:

"§ 158. National minimum drinking age

23 USC 158.

Alcohol and alcoholic beverages.

"(a)(1) The Secretary shall withhold 5 per centum of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6) of this title on the first day of the fiscal year succeeding the fiscal year beginning after September 30, 1985, in which the purchase or public possession in such State of any alcoholic beverage by a person who is less than twenty-one years of age is lawful.

23 USC 101.

"(2) The Secretary shall withhold 10 per centum of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6) of this title on the first day of the fiscal year succeeding the second fiscal year beginning after September 30, 1985, in which the purchase or public possession in such State of any alcoholic beverage by a person who is less than twenty-one years of age is lawful.

"(b) The Secretary shall promptly apportion to a State any funds which have been withheld from apportionment under subsection (a) of this section in fiscal year if in any succeeding fiscal year such State makes unlawful the purchase or public possession of any alcoholic beverage by a person who is less than twenty-one years of age.

"(c) As used in this section, the term 'alcoholic beverage' means—

"(1) beer as defined in section 5052(a) of the Internal Revenue Code of 1954,

26 USC 5052.

"(2) wine of not less than one-half of 1 per centum of alcohol by volume, or

"(3) distilled spirits as defined in section 5002(a)(8) of such Code.".

26 USC 5002.

(b) The table of sections of chapter 1 of such title is amended by adding at the end thereof the following new item:

"158. National minimum drinking age.".

SB91

Exhibit D
2/7/85
SB91

Recommendations for Revisions in Venue Statutes Prepared by the Montana Supreme Court Commission on the Rules of Evidence

PREFACE

This report and the accompanying draft bill are submitted to partially fulfill the request of Senate Joint Resolution 24 of the 48th Legislature that the Supreme Court Commission on the Rules of Evidence prepare draft legislation for submission to the 49th Legislature to provide that "statutory provisions on venue . . . accurately reflect the current usages and interpretations of those laws . . . ."

The Resolution recognized that the existing statutes "no longer reflect on their face the present state of the law," and expressed a desire that new draft statutes be prepared incorporating the "logical, useful, and consistent" rules and practices which have evolved by judicial construction of the present laws.

The current venue statutes were adopted in 1864 at Bannack and are substantially the same today as when they were enacted. Throughout the 120 years of their existence these venue statutes have been the subject of dozens, perhaps hundreds, of appeals to the Montana Supreme Court. Many of the appeals were caused by the silence of the statutes on principles necessary to their operation; other appeals resulted from the ambiguity of certain fundamental language. The commands of various venue sections that particular kinds of cases "shall," "may," or "must" be tried in specified counties resulted in seemingly unending litigation. Concerning one of these sections, Justice Sheehy, writing for a unanimous court, complained in 1978:

> Possibly no statute has spawned more litigation in this state than section 93-2904 relating to the proper place of trial. Year after year we are called upon to interpret anew what are seemingly simple code provisions and to explain again the impact of our decisions under the statute. (Clark Fork Paving, Inc. v. Atlas Concrete, 178 Mont. 8, 582 P.2d 779.)

Justice Sheehy went on to extract, from what he termed "the mountain of cases which have arisen," the long-standing rules that decided the issue, and restated them for the thirtieth or fortieth time.

The Clark Fork case illustrates the fundamental problem: basic rules exist but many cannot be found in the statutes. They must be located in, and sifted from, a "mountain of cases." When attorneys have not found the applicable Supreme Court opinion in the 190-odd volumes of Montana Reports (or hope that their opponents have not), the same legal questions are hauled before the Court again and again and again.

The new statutes proposed in this draft have three objectives:

(1) to include in the Montana Code Annotated those rules which have been declared and are settled by the Supreme Court but are not now stated in the Code;

(2) to change the language, without changing the meaning, of the sections that have caused the most litigation (primarily by substituting the designation "proper place of trial" for the ambiguous command that cases "shall," "may," or "must" be tried in particular counties);

(3) to settle the few matters where there is still a seeming ambiguity, following general principles along the lines that the Court seems to feel would be best derived from what the Court has held in other situations.

NEW SECTION. Section 1. Scope of part. The proper place of trial (venue) of a civil action is in the county or counties designated in this part.

Explanation: The only purpose of this section is clarity. It is simply an expression of the fundamental principle incorporated but unstated in the present Code and its predecessors.

NEW SECTION. Section 2. Designation of proper place of trial not jurisdictional. The designation of a county in this part as a proper place of trial is not jurisdictional and does not prohibit the trial of any cause in any court of this state having jurisdiction.

Explanation: This new section is intended to codify the results of a series of cases dealing with recurrent problems caused by the form and language of the current statutes. Although intended

only to set rules of venue, the phrasing of the present statutes has caused many litigants to believe they prescribe jurisdictional requirements. The Supreme Court has had to rule repeatedly that these statutes do not in any way affect the jurisdiction of District Courts to try cases brought before them. All District Courts have equal power to try any action of which the district courts, as a group, have jurisdiction (Miller v. Miller, ___ Mont. ___, 616 P.2d 313 (1980); State ex rel. Foster v. Mountjoy, 83 Mont. 162, 271 P. 446 (1928)). Even if a court is not the proper one as designated by the venue statutes, it can try a case if there is no objection from a party through a motion for a change of venue (Miller v. Miller, supra; Bullard v. Zimmerman, 82 Mont. 434, 268 P. 512 (1928)). Unless there is a demand by one of the parties, a court is not authorized to order the case transferred to another county or to refuse to try the case (State ex rel. Gnose v. District Court, 30 Mont. 188, 75 P. 1109 (1904); Danielson v. Danielson, 62 Mont. 83, 203 P. 506 (1921)).

Since these questions have arisen repeatedly over a long period of time, it seems sensible to include this or a similar provision to prevent endless recurrences in the future.

NEW SECTION. Section 3. Power of court to change place of trial. The designation in this part of a proper place of trial does not affect the power of a court to change the place of a trial for the reasons stated in 25-2-201(2) or (3), or pursuant to an agreement of the parties as provided in 25-2-202.

Explanation: This section is simply a consolidation into a single section a principle now expressed separately and not very clearly in each statute. Every venue statute now, after designating the proper county or counties for particular purposes, includes a provision that it is "subject, however, to the power of the court to change the place of trial as provided in this code." The Supreme Court has had to state on many occasions that the clause is intended only to preserve the trial courts' discretionary power of granting changes of venue to secure impartial trials or to promote convenience of witnesses or the ends of justice. The proposed section incorporates these declarations and should make the meaning clear.

NEW SECTION. Section 4. Right of defendant to move for change of place of trial. If an action is brought in a county not designated as the proper place of trial, a defendant may move for a change of place of trial to a designated county.

Explanation: This section and section 5 specify that the right to move for a change of place of trial on the ground that the action is brought in the wrong county belongs exclusively to a defendant. It might be argued that this right should extend to some other classes of litigants, such as involuntary plaintiffs under Rule 19(a), M.R.Civ.P. or some intervenors (Rule 24, M.R.Civ.P.). The courts have always held that such parties must accept the status of the ongoing action as they find it at the time of their entry. Further, Rule 12(b)(ii), M.R.Civ.P. provides that only defendants can move for a change of venue on this ground, which is consistent with all of the Supreme Court holdings.

NEW SECTION. Section 5. Multiple proper counties. If this part designates more than one county as a proper place of trial for any action, an action brought in any such county is brought in a proper county, and no motion may be granted to change the place of trial upon the ground that the action is not brought in a proper county under 25-2-201(1). If an action is brought in a county not designated as a proper place of trial, a defendant may move for a change of place of trial to any of the designated counties.

Explanation: Present statutes do not deal with this situation.

This section codifies a number of Supreme Court holdings that do. In many cases (particularly tort and contract actions) alternative venues are authorized, but the manner of choosing between them is not stated. A sizeable amount of litigation has resulted. All of the cases have held that the plaintiff has the initial choice and, if he selects a county that is proper, the issue is closed, but that if the plaintiff files the action in a county that is not one of those designated, he has waived the right to choose, which passes to the defendant. Defendant can then decide to which of the proper counties he wants the case transferred. Of the many cases dealing with the problem, Seifert v. Gehle, 133 Mont. 320, 323 P.2d 269 (1958), a tort action, gives the clearest statement:

> In this case the statute means that either the county of defendant's residence or the county where the tort was committed is a proper county for the trial of the action, and had the plaintiff chosen either of those counties, the defendant could not have had it removed.
>
> In this case plaintiff waived his right to have it tried in one of the proper counties. Therefore, the defendant has the right upon proper demand to have the place of trial changed either to the county where he resides or to the county where the tort was committed, whichever he elects.

This proposed section will preserve the rule of Seifert and other cases. It allows the plaintiff first choice among the proper venues and provides that a correct choice by him cannot be changed. If the plaintiff's selection is not one of the designated counties, the initiative passes to the defendant. He can move for a change to the proper county of his choice, and section 25-2-201 MCA requires that the trial court grant the motion.

NEW SECTION. Section 6. Multiple claims. In an action involving two or more claims for which this part designates more than one as a proper place of trial, a party entitled to a change of place of trial on any claim is entitled to a change of place of trial on the entire action, subject to the power of the court to separate claims or issues for

trial under Rule 42(b) of the Montana Rules of Civil Procedure.

Explanation: The present statutes do not cover this situation. This section codifies the holdings of the Supreme Court in cases that have raised the question. Our statutes have no provision for the multiple claim situation in which the county where the plaintiff files is correct on one claim but not for one or more of the others. It is possible, at least since the adoption of Rule 42(b), for a court to split the action and grant a change on one or more claims, but this causes multiple trials and may be a cure worse than the disease. For a great many years our Court has ruled consistently that a defendant entitled to a change of venue on one claim should have it on the entire action. The Court feels the rule is necessary to prevent a plaintiff from controlling venue by adding spurious claims that have little or no validity, but are triable in the forum the plaintiff chooses rather than at the normal situs which would be the defendant's residence or another location more favorable to the defendant.

This new provision codifies the result of this unbroken line of opinions: Yore v. Murphy, 10 Mont. 304, 25 P. 1039 (1891); Heinecke v. Scott, 95 Mont. 200, 26 P.2d 167 (1933); Beavers v. Rankin, 142 Mont. 570, 385 P.2d 640 (1963). It makes no change in existing law, but simply enacts it into the Code where it is available.

NEW SECTION. Section 7. Multiple defendants. If there are two or more defendants in an action, a county that is a proper place of trial for any defendant is proper for all defendants, subject to the power of the court to order separate trials under Rule 42(b) of the Montana Rules of Civil Procedure. If an action with two or more defendants is brought in a county that is not a proper place of trial for any of the defendants, any defendant may make a motion for change of place of trial to any county which is a proper place of trial.

Explanation: On a few occasions, the Supreme Court has had to deal with the problem posed by multiple defendants with conflicting venue rights. Most situations involve defendants who live in different counties, but this presents no difficulty since the statutes (Section 25-2-108 MCA; amended in section 7 of this draft) have always allowed the plaintiff to file at the residence of any of them. Tort, contract, and real property actions, however, which present choices other than residence, have been troublesome. Heinecke v. Scott, 95 Mont. 200, 26 P.2d 167 (1933) raised but did not give a definitive answer to the question of possible priorities between defendants whose venue rights arise under different statutory provisions. That case involved contract, tort, and real property claims, and was brought at the plaintiff's residence where none of the defendants lived. The Court held that the action was basically one for recovery of real property, to which the tort and contract claims were subsidiary. Since all of the defendants were residents of the county where the land was situated, a change of venue to that county was awarded. The court noted that small differences in the facts might have presented much more complex questions. These questions are what this proposed section attempts to meet. The section would simply extend the same "good as to one, good as to all" principle that has always governed venue based on residence to all situations. Rule 42(b), which was not available at the time of the Heinecke case, could be used to alleviate the difficulties of a defendant placed at a real disadvantage.

This proposed section does not change existing law or establish any new principle. Like the other new provisions it simply tries to codify existing case law (although, in this instance, cases are neither plentiful nor clear-cut) so that all the fundamental principles will be gathered together in one place and stated as plainly as possible.

Section 8. Section 25-2-108, MCA, is amended to read:

"25-2-108. ~~Other--actions~~ Residence of defendant. ~~In all other cases, the action shall be tried in~~ Unless otherwise specified in this part:

(1) the proper place of trial for all civil actions is the county in which the defendants or any of them may reside

at the commencement of the action ~~or where the plaintiff resides and the defendants or any of them may be found~~; or

(2) if none of the defendants reside in the state, ~~or, if residing in the state, the county in which they so reside be unknown to the plaintiff, the same may be tried in any county which the plaintiff may designate in his complaint, subject, however, to the power of the court to change the place of trial as provided in this code~~ the proper place of trial is any county the plaintiff designates in the complaint."

Explanation: This revised section changes the location and arrangement of the most basic rules but does not alter their content significantly. Currently, section 25-2-108, which states the most fundamental of all venue rules--that the defendant has the right to have the trial in his county of residence--is the last section in Part 1, Chapter 2, Title 25, preceded by a long list of exceptions to it. The sequence is confusing and has caused much needless litigation. This revision tries to put first things first, beginning with the most fundamental proposition, and following it with the exceptions.

Subsection (1). This subsection extracts from the confusing welter of statutes what the Supreme Court has repeatedly called the "principal rule" of venue (see Hardenburgh v. Hardenburgh, 115 Mont. 46, 146 P.2d 151 (1944); Love v. Mon-O-Co Oil Corp., 133 Mont. 56, 319 P.2d 1056 (1957); Clark Fork Paving v. Atlas Concrete, 178 Mont. 8, 582 P.2d 779 (1978)) and places it at the beginning, rather than the end, of the related group of rules. The proper relationship between this principle and others that are subordinate to it has generated most of what Justice Sheehy, in Clark Fork Paving, called the "mountain of cases" that the present statutes have spawned. This new order and placement is intended to emphasize the pre-eminence of this rule and the Court's repeated insistence upon it.

The stricken material "or where the plaintiff resides and the defendants or any of them may be found" at the end of subsection (1) is part of the current rule, but, in the judgment of the Commission, should be eliminated entirely. This deletion constitutes a substantive change in current law, the only such change in the draft bill. Unlike the fundamental principle to which it

is attached, this separate method of fixing venue is legally questionable and almost never used except in domestic relations actions. As a built-in exception to the rule that a defendant is entitled to trial in his own county, it is an open invitation to subterfuge and sharp practice by plaintiffs' attorneys, and was so characterized in the single case construing it that has reached the Supreme Court. By a 3-2 decision in Shields v. Shields, 115 Mont. 146, 139 P.2d 528 (1943) the Court held that this portion of the statute permitted a plaintiff to keep a divorce case in his own home county rather than that of the defendant by serving her when she had to leave her home county and come to the plaintiff's in connection with other litigation between them. The two dissenting judges called the plaintiff's action fraudulent. They argued that the provision was intended to be used only when the defendant had no residence in Montana, or had one but could not be found there. The dissenters' contention, though it did not prevail, apparently cast so much doubt on the practice that it has never again, in over 40 years, come before the Supreme Court. The Commission recognizes that this deleted language is often used in domestic relations cases; to preserve this existing use, similar language could be incorporated into 40-4-105(3), MCA. The situation for child custody is covered in 40-4-211, MCA.
The legitimate uses of the deleted language--to set venue in the cases of non-residents or residents whose whereabouts cannot be ascertained--are substantially covered by subsection (2) of the current draft.

Subsection (2). This provision clarifies the portion of section 25-2-108 dealing with nonresident defendants. Since, by definition, a nonresident of the state is not resident in any county, the basic rule of subsection (1) cannot apply. In this situation the statute has always given the right of choosing venue to the plaintiff, and this draft contemplates no change.

Most of the litigation under this provision has dealt with nonresident corporations. An unbroken chain of decisions holds that a foreign corporation has no Montana residence for venue purposes, can be sued in any county selected by the plaintiff, and has no right to a change of venue for improper county (Pue v. Northern Pacific Ry. Co., 78 Mont. 40, 252 P. 313 (1926); Hanlon v. Great Northern Ry. Co., 83 Mont. 15, 268 P. 547 (1928); Truck Insurance Exchange v. NFU Property and Casualty, 149 Mont. 387, 427 P.2d 50 (1967); Foley v. General Motors Corp., 159 Mont. 469, 499 P.2d 774 (1972)). Since, under this statute, any county selected by the plaintiff is a proper place of trial, a nonresident is not entitled to a change even in those instances, like tort and contract actions, where alternative venues are authorized (Morgan and Oswood v. U. S. F. & G., 167 Mont. 64, 535 P.2d 170 (1975)).

All of the existing case holdings would be undisturbed by subsection (2). The law will remain just as it is.

It should be noted that subsection (2) applies only to the nonresident and does not affect the rights of a resident who may be joined as co-defendant with the nonresident. The resident retains whatever rights he may have to a venue change (Foley v. General Motors Corp., supra).

The stricken language providing for designation of a proper county by a plaintiff was deleted as redundant with section 4. A plaintiff, whether he knows the residence of the defendant or not, may file in any county subject to defendant's right to move the trial.

Section 9. Section 25-2-101, MCA, is amended to read:

"25-2-101. ~~Contract actions~~ Contracts. ~~Actions~~ (1) The proper place of trial for actions upon contracts ~~may be tried in~~ is either:

(a) the county in which the defendants, or any of them, reside at the commencement of the action; or

(b) the county in which the contract was to be performed~~, subject, however, to the power of the court to change the place of trial as provided in this code~~. The county in which the contract was to be performed is:

(i) the county named in the contract as the place of performance; or

(ii) if no county is named in the contract as the place of performance, the county in which, by necessary implication from the terms of the contract, considering all of the obligations of all parties at the time of its execution, the principal activity was to take place.

(2) Subsections (2)(a) through (2)(d) do not constitute a complete list of classes of contracts; if, however, a contract belongs to one of the following classes, the proper county for such a contract for the purposes of subsection (1)(b)(ii) is:

(a) contracts for the sale of property or goods: the county where possession of the property or goods is to be delivered;

(b) contracts of employment or for the performance of services: the county where the labor or services are to be performed;

(c) contracts of indemnity or insurance: the county where the loss or injury occurs or where a judgment is obtained against the assured or indemnitee or where payment is to be made by the insurer;

(d) contracts for construction or repair: the county where the object to be constructed or repaired is situated or is to be built."

Explanation: Present section 25-2-101 was, until the recodification of 1979, part of section 93-2904, RCM 1947, which lumped together in a single paragraph the basic rule of venue and all its major exceptions. This was the provision about which Justice Sheehy said, in Clark Fork Paving v. Atlas Concrete, 178 Mont. 8, 582 P.2d 779 (1978), "Possibly no statute has spawned more litigation in this state . . . ." The portion that has become section 25-2-101 was the focus of a major portion of that litigation.

The original intent of the "contract exception" to the general rule placing venue at the residence of the defendant was to permit an alternative place of trial. The plaintiff could, if he chose, elect to file his action in the county where the contract was to be performed rather than at defendant's residence. The

Supreme Court, however, in Interstate Lumber Co. v. District Court, 54 Mont. 602, 172 P. 1030 (1918), held that the word "may" in the statute meant "must" and construed the provision to mean that contract actions were properly triable only in the county of performance. This decision, in conjunction with the earlier case of State ex rel. Coburn v. District Court, 41 Mont. 84, 108 P. 144 (1910), which had ruled that the place of performance of all contracts calling for payment of money was at the place of the payment, effectively established the venue of practically all contract actions at the plaintiff's, rather than the defendant's, residence. The Coburn and Interstate Lumber cases were overruled in Hardenburgh v. Hardenburgh, 115 Mont. 469, 146 P.2d 151 (1944) which decided that "may" means "may" rather than "must" and set out rules for determining the place of performance of various types of contracts that have been followed down to the present.

The last sentence of subsection (1)(b) and subsection (2) through the end of the section is an attempt to codify the results of an extensive line of cases dealing with the problems created by section 25-2-101, MCA, and its predecessor, particularly those cases struggling with the meaning of the "place of performance" language of the statutes.

The contract venue statutes since their beginning have clearly intended to allow alternative venues when a contract is to be performed in a county other than the one where the defendant lives, but they have not proven easy to apply. Although the Hardenburgh case got rid of an obviously erroneous interpretation that had robbed the alternative provision of much of its benefit, the decision did not settle all the problems. Determining the place where a contract is to be performed is frequently not an easy task. Most contracts call for a monetary payment of some sort, and when, under the Coburn and Interstate Lumber cases, this was made the single determinative factor, the location was normally clear. After those decisions were changed, that certainty disappeared. The Hardenburgh court, anticipating the difficulties that could result, laid down a succession of interpretive rules which have generally been followed and developed in later cases.
This portion of the section seeks to state the case rules in a form as brief and complete as possible although, in dealing with a series of court opinions that are lengthy and diverse, and extend over a period of 40 years, the rules are not always simple and clear.

The Hardenburgh rules establish a basic framework. If a contract specifies a place of performance, the matter is settled; the courts will accept the designation. Where the contract is not specific, the court will look to see whether the contract allows performance to occur only at a particular site. If so, that is the location "by necessary implication." Some of these determinations are reasonably simple, others complex. In the uncomplicated category are such cases as Colbert Drug v. Electrical Products, 106 Mont. 11, 74 P.2d 437 (1937) where the contract, although it did not specify any county as the place of perfor-

mance, was to maintain neon signs in Butte; Thomas v. Cloyd, 110 Mont. 343, 100 P.2d 938 (1940) in which the defendant contracted to secure employment for the plaintiff in Butte; and Love v. Mon-O-Co Oil, 133 Mont. 56, 319 P.2d 1056 (1958), an action on a contract to drill an oil well on a described tract of land which lay in Fallon county. In each case the Court found a county of performance specified by necessary implication.

Where both parties have duties and obligations which must be carried out at different locations, fixing the place of performance becomes more difficult. Before Hardenburgh, place of payment was the sole determining factor in most cases. After Hardenburgh, the court, in a search for a similar touchstone, experimented with a number of factors; place of negotiation, place of execution, place of payment, or some combination of them. Ultimately, it settled on the "county of activity," that is, the county where the primary purpose of the contract was to be accomplished.

Determining "county of activity" as outlined in the series of cases which fixed this as the test, involves several steps. It begins with a consideration of all the duties and obligations of all the parties (Hardenburgh); then the court seeks to determine the ultimate purpose to be achieved and decide which of the various acts are primary and which subsidiary to that purpose. The county where the primary actions are to be performed is the county of activity. The process was most clearly demonstrated in Brown v. First Federal Savings and Loan, 144 Mont. 149, 394 P.2d 1017 (1964), which also contains the clearest expression of the principle. The plaintiffs, residents of Lewis and Clark County, received a loan from the defendant loan association to build a house in Helena. The association's office was in Great Falls; the loan was made there, payments were to be received there, the contractors and subcontractors were to be supervised and paid from there, and all the financial activities performed there. The actual construction, however, was all in Lewis and Clark County. The plaintiffs' action was for breach of defendant's obligations to supervise and pay the contractors properly. Defendants claimed venue was in Cascade County because the suit concerned duties to be performed there. Plaintiffs maintained that the contract existed primarily to build a house in Lewis and Clark County, and that was the proper county of performance. The Supreme Court held for the plaintiffs, saying, in part, "The theatre of performance, by necessary implication of what the parties intended as evidenced by the terms of the contract, is Helena."

Brown is one of a number of cases holding that it is the overall purpose of the contract, not the particular provision that is in contest in the action, which governs venue. It is also one of a series, again beginning with Hardenburgh, which have decided what what is "necessarily implied" about performance of particular

kinds of contracts. It is these rules that are set out in subsections (2)(a) through (2)(d) of the draft bill.

The lead-in to subsection (2) recognizes that the contracts named in the subsection are not an exclusive list of contracts, but merely those in which a rule has evolved. The Commission does not intend to require that all contracts somehow be pigeon-holed into one of the categories to establish venue. Contracts not within the list are subject to analysis under subsection (1)(b)(ii) to establish venue.

Subsection (2)(a) incorporates the holding of the Hardenburgh case, which involved the sale of a business and included real and personal, tangible and intangible property; McNussen v. Graybeal, 141 Mont. 571, 380 P.2d 575 (1963) dealing with sale of milk produced and gathered in Lake county but sold in Missoula (venue was held to be in Missoula county where delivery and sale was made); and Hopkins v. Scottie Homes, 180 Mont. 498, 591 P.2d 230 (1979) where a mobile home was financed and sold in Valley county for delivery and erection in Musselshell county (venue lay in Musselshell county where delivery was to be made and the home set up).

Subsection (2)(b) adopts the rule declared in Hardenburgh for employment contracts. The Hardenburgh decision specifically overruled the portion of State ex rel. Coburn v. District Court, 41 Mont. 84, 108 P. 145 (1910) which had held that the venue of any contract calling for payment of money was at the residence of the creditor, but adopted the holding of Coburn that the place of performance of a labor contract was the place where the labor or services were to be performed. No subsequent cases have dealt with the question, so the basic rule of Coburn and Hardenburgh is clearly in force and is expressed in this subsection.

Subsection (2)(c) sets out the "insurance and indemnity" rule expressed in Hardenburgh, Hartford Accident and Indemnity Co. v. Viken, 157 Mont. 93, 483 P.2d 266 (1971), and General Insurance Co. v. Town Pump, ___ Mont. ___, 640 P.2d 463 (1982). Hardenburgh did not deal with insurance, so its discussion of the subject is technically dictum, but the Court was trying to deal with all the implications of the basic change it had made by overruling the Coburn and Interstate Lumber cases. The later Hartford and General Insurance opinions adopted Hardenburgh's rationale and applied it to the insurance contracts at issue in those cases. Using the "principal activity" test of Brown v. First Federal, supra, the Court in Hartford ruled that the performance called for in an insurance or indemnity contract is payment by the insurer on the happening of the named contingency. General Insurance made this doctrine more specific by holding that the place of performance of an insurance contract covering property in a number of different locations was in the county where the particular property involved in the claim at issue was situated.

The language of subsection (2)(c) is taken from the opinions in the Hardenburgh and Hartford cases.

Subsection (2)(d) is the rule of Brown v. First Federal, supra. Brown dealt with a contract for the original construction of a building, but the conclusion seems inescapable that its rationale is equally applicable to repair contracts, so they are included.

Note: Not all of the cases construing the contract exception to the basic venue rule, even those beginning with Hardenburgh, are totally reconcilable. Considering their numbers, it would be a miracle if they were. This proposed section is based on the large majority of the cases, which includes all of those that are most detailed and thoroughly considered, holding that contract venue lies in the county where the principal activity is to take place. A few opinions seem to state that a contract can have more than one place of performance, depending on the part of the contract sought to be enforced or the purpose of the specific litigation. These cases ignore the statutory language referring to the county in which the contract was to be performed, and are an open invitation to continue the endless round of litigation that the contract exception has spawned in the past. The proposed section therefore presumes a single place of performance of any contract, located in the county of its principal activity.

This proposal would follow and reaffirm Hardenburgh, Brown, McNussen v. Graybeal, and Hopkins v. Scottie Homes, but reject the rule of Peenstra v. Berek, ___ Mont. ___, 614 P.2d 521, which held that a contract for sale of goods was divisible into separate performances by buyer and seller. Each was to occur in a different county--the seller was to deliver the goods in the buyer's county, and the buyer was to make payments in the seller's county. Since the seller's performance was complete and he had brought the action for payment, the Court said, venue lay in the county where the buyer was to perform by making payment. Peenstra casts doubt on the entire sequence of decisions since Hardenburgh and throws the law back into uncertainty. The proposed section rejects it and any other decisions based on a "multiple performance" concept.

Section 10. Section 25-2-102, MCA, is amended to read:

"25-2-102. ~~Tort actions~~ Torts. ~~Actions for torts may be tried in the~~ The proper place of trial for a tort action is:

(1) The county in which the defendants, or any of them, reside at the commencement of the action; or

(2) The county where the tort was committed~~, subject, however, to the power of the court to change the place of trial as provided in this code~~. If the tort is interrelated with and dependent upon a claim for breach of contract, the tort is committed, for the purpose of determining the proper place of trial, in the county where the contract was to be performed."

Explanation: This section changes the form but not the substance of the tort exception to the basic venue rule, and adds, in the last sentence of subsection (2), the essence of the Supreme Court's holding in Slovak v. Kentucky Fried Chicken, 164 Mont. 1, 518 P.2d 791 (1974).

The present language of section 25-2-102, like the identical wording of the contract exception, that the action "may be tried" in the county where the tort was committed, has contributed to the "mountain of cases" that Justice Sheehy complained of in the Clark Fork Paving case. The principal case, Seifert v. Gehle, 133 Mont. 320, 323 P.2d 269 (1958) followed the Hardenburgh interpretation--that the language was permissive and created an alternative to the basic rule that venue lies at the defendant's residence. This holding has not been seriously questioned since it was handed down. It accords with the contract cases and makes the interpretation uniform.

The problems that arose after Seifert were in fixing the situs of torts that involved no physical injury. Three times in 10 years the Supreme Court had to determine the county where torts would be held to be committed if they arose from a business relationship (Brown v. First Federal, supra; Foley v. General Motors, 159 Mont. 469, 499 P.2d 774 (1972); Slovak v. Kentucky Fried Chicken, 164 Mont. 1, 518 P.2d 791 (1974)). The common factor in all the cases was the existence of a contract between the parties, out of which the tort was claimed to have sprung.

In Brown and Foley the question was not reached because other considerations were decisive, but the issue was central and squarely presented in Slovak. The Court decided that in tort actions arising from contractual relationships, the tort has the same situs, for venue purposes, as the contract.

This proposed section codifies the rules of Seifert and Slovak.

Section 11. Section 25-2-103, MCA, is amended to read:

"25-2-103. ~~Actions involving real~~ Real property. (1) ~~Actions~~ The proper place of trial for the following ~~causes must be tried in~~ actions is the county in which the subject of the action or some part thereof is situated~~, subject to the power of the court to change the place of trial as provided in this code~~:

(a) for the recovery of real property or of an estate or an interest therein or for the determination, in any form, of such right or interest;

(b) for injuries to real property;

(c) for the partition of real property;

(d) for the foreclosure of all liens and mortgages on real property.

(2) Where the real property is situated partly in one county and partly in another, the plaintiff may select either of the counties and the county so selected is the proper county for the trial of such action.

(3) ~~All~~ The proper place of trial for all actions for

the recovery of the possession of, quieting the title to, or the enforcement of liens upon real property ~~must---be commenced--in~~ is the county in which the real property, or any part thereof, affected by such action or actions is situated."

Explanation: Amended only to conform with terminology and principles set forth in sections 1 through 10 of the draft.

Section 12. Section 25-2-104, MCA, is amended to read:

"25-2-104. ~~Actions--to--recover~~ Recovery of statutory penalty or forfeiture. ~~Actions~~ The proper place of trial for the recovery of a penalty or forfeiture imposed by statute ~~must--be-tried-in~~ is the county where the cause or some part thereof arose, ~~subject-to-the-power-of-the-court--to--change the--place--of--trial,~~ except that when it is imposed for an offense committed on a lake, river, or other stream of water situated in two or more counties, the action may be brought in any county bordering on such lake, river, or stream and opposite to the place where the offense was committed."

Explanation: Amended only to conform with terminology and principles set forth in sections 1 through 10 of the draft.

Section 13. Section 25-2-105, MCA, is amended to read:

"25-2-105. ~~Actions against~~ Against public officers or their agents. ~~Actions~~ The proper place of trial for an action against a public officer or person specially appointed to execute his duties for an act done by him in virtue of his office or against a person who, by his command or in his aid, does anything touching the duties of such officer ~~must be tried in~~ is the county where the cause or some part thereof arose~~, subject to the power of the court to change the place of trial~~."

Explanation: Amended only to conform with terminology and principles set forth in sections 1 through 10 of the draft.

Section 14. Section 25-2-106, MCA, is amended to read:

"25-2-106. ~~Actions against~~ Against counties. ~~An~~ The proper place of trial for an action against a county ~~may be commenced and tried in such~~ is that county unless such action is brought by a county, in which case ~~it may be commenced and tried in~~ any county not a party thereto is also a proper place of trial."

Explanation: Amended only to conform with terminology and principles set forth in sections 1 through 10 of the draft.

Section 15. Section 2-9-312, MCA, is amended to read:

"2-9-312. ~~Venue-of-actions~~ Against state and political subdivisions. (1) ~~Actions~~ The proper place of trial for an action against the state ~~shall-be-brought~~ is in the county in which the ~~cause--of-action~~ claim arose or in Lewis and Clark County. In ~~addition,~~ an action brought by a resident of the state, ~~may--bring--an--action-in~~ the county of his residence is also a proper place of trial.

(2) ~~Actions~~ The proper place of trial for an action against a political subdivision ~~shall-be-brought~~ is in the county in which the ~~cause-of-action~~ claim arose or in any county where the political subdivision is located."

Explanation: Amended to conform to the rest of the bill in terminology for inclusion into Title 25, chapter 2, part 1. Section was originally enacted relating to sovereign immunity actions, but the Commission believes it should properly be moved to general venue provisions.

NEW SECTION. Section 16. Specific statutes control. The provisions of this part do not repeal, by implication or otherwise, specific statutes not within this part, designating a proper place of trial, whether or not such a designation is called venue or proper place of trial.

Explanation: This section is to reaffirm that general venue statutes, even though they are later enactments, are not intended to disturb specific code sections establishing venue. In such cases the specific statute not within Title 25, chapter 2, part 1 is controlling.

NEW SECTION. Section 18. Repealer. Section 25-2-107, MCA, is repealed.

> **25-2-107. Actions in which defendant is about to depart.** If any defendant or defendants may be about to depart from the state, the action may be tried in any county where either of the parties may reside or service be had, subject, however, to the power of the court to change the place of trial as provided in this code.

Explanation: This section is redundant and repeal prevents possible confusion. A plaintiff may file an action in any county, whether or not the defendant is about to depart the state, and the defendant may move to move the place of trial. The long-arm statutes have eliminated the necessity for a quick filing for fast service in any case.

EXHIBIT E
3/7/85

WITNESS STATEMENT

NAME MIKE MALES BILL No. SB 3

ADDRESS 528 N. F Street, Livingston, MT DATE 6 March 1985

WHOM DO YOU REPRESENT self

SUPPORT XXXXX OPPOSE _____ AMEND XXXXX

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Proposed amendment to SB 3:

Page 1, line 11: after "PURCHASING", delete ", CONSUMING,"

after "OR", add "PUBLICLY"

Page 1, line 20: after "PURCHASING", delete ","

Page 1, line 21: delete "consuming,"

after "or", add "publicly"

* * * * *

Comments: (1) See U.S. PL 98-363, "National Minimum Drinking Age."

(2) Montana does not regulate the consumption of alcoholic beverages even for minors (who are not affected by this amendment).

(3) Right of personal privacy requires that the lawful use of alcoholic beverages by a legal adult in his/her own home or other private location be free from interference.

(4) SB 3 is much superior to existing constitutional language and deserves approval.

FORM CS-34
1-81

VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

SENATE BILL NO. 5 (Sen. Daniels); 57 (Sen. Conover); 60, 87, 91 (Sen. Mazurek) DATE March 7, 1985

SPONSOR

NAME (please print)	~~XXXXXXXXX~~ REPRESENTING	SUPPORT	OPPOSE
Michael Abley	Supreme Court	SB 91	
W.F. Crowley	Supreme Court Commission on Rules of Evidence	SB 91	
Dave Robinson-IV	Montana Bankers Assn	SB 60	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.