

MONTANA STATE SENATE  
JUDICIARY COMMITTEE  
MINUTES OF THE MEETING

January 25, 1985

The fourteenth meeting of the Senate Judiciary Committee was called to order at 10:06 a.m. on January 25, 1985, by Chairman Joe Mazurek in Room 325 of the Capitol Building.

ROLL CALL: All committee members were present.

CONSIDERATION OF SB 132: Senator Mike Halligan, sponsor of SB 132, stated this bill was introduced in response to some problems they have been experiencing with aggravated assault charges. This bill establishes first- and second-degree assault charges. The penalty for first-degree assault has not been changed. The change comes with the second degree assault charge, where the penalty has been changed to a prison term not to exceed 10 years or a fine not to exceed \$50,000, or both.

PROPOSERS: J. Fred Bourdeau, Cascade County Attorney, appeared in support of SB 132. He stated this bill will serve every county attorney and every defense attorney in the state of Montana. He explained what they are trying to do with this bill is walk the line between rigid, strict law enforcement and being light on crime. They believe the punishment must fit the crime. This bill lets the legislature mandate the mandatory sentence where there is serious bodily injury, but it allows a lesser plea where there is not serious bodily injury. Mr. Bourdeau indicated from others in the County Attorneys Association that doing away with the mandatory two-year sentence would do the same thing, but he believes you should have the mandatory two-year sentence for those instances where there is serious bodily injury. Mark Racicot, from the Attorney General's office, appeared on behalf of the County Attorneys Association and stated they are not here, but they would prefer to simply eliminate the two-year mandatory minimum sentence. Their second option would be to support SB 132. Tom Schneider, Executive Director of the Montana Public Employees Association, appeared in support of SB 132 on behalf of the prison guards in Deer Lodge. He explained that when a prisoner assaults a prison guard, they refuse to charge them because of the mandatory two-year minimum. They believe this bill would allow them to be charged. (See written testimony attached as Exhibit 1 submitted by William J. Ware on behalf of the Montana Association of Chiefs of Police.)

OPPOSERS: None.

QUESTIONS FROM THE COMMITTEE: Senator Towe asked Mr. Racicot to again state what the county attorneys preferred. Mr. Racicot stated the majority would simply prefer to eliminate the mandatory two-year sentence and allow it to be up to the judge. Senator Towe stated we got away from dividing crimes into degrees in 1973. Senator Mazurek asked Mr. Racicot if there were an assault charge at the federal level. Mr. Racicot responded no; they have aggravated assault and simple assault. Senator Mazurek asked if we could also consider the possibility of instead of dividing it into degrees, making it an assault charge (along the lines of the bill's description of second-degree assault) and aggravated assault (along the lines of the bill's description of first-degree assault). Mr. Racicot stated he believes the terminology involved is not as important as the concept of the bill. Senator Blaylock asked Mr. Racicot about the difference between charge bargaining and plea bargaining. Mr. Racicot stated they are not dealing with the charge in mind, but the results in mind; they are changing the charges rather than dealing with the sentence. Senator Towe asked Mr. Racicot and Mr. Bourdeau about Senator Mazurek's suggestion about rather than calling it second-degree assault, calling it something else, such as plain assault or simple assault. Mr. Bourdeau suggested felonious assault. Mr. Racicot stated it was a difficult problem deciding on degrees in the old days, so the suggestion not to return to degrees appeared appropriate. Senator Towe asked Mr. Bourdeau if we opened the door by using degrees once, would we be returning to it again and again. Mr. Bourdeau responded he did not want to return to degrees and explained he frankly didn't come up with your suggestion. He thinks felonious assault would be good somewhere between aggravated assault and simple assault. Senator Towe asked Mr. Bourdeau to focus his attention on the need to have two-year sentences. Mr. Bourdeau stated he would not argue with the wisdom of the legislature in mandatory sentences. Senator Towe asked if he would be terribly offended if they struck the two-year sentence. Mr. Bourdeau stated Senator Towe just struck oil-- that would answer the problem. Senator Crippen stated he thinks the legislature, when they enacted mandatory sentences, were reacting to public opinion. He will stand opposed to knocking off the two-year sentence, because then the jury is free to reduce it to second-degree assault.

CLOSE: None.

Hearing on SB 132 was closed.

Chairman Mazurek announced the committee has been requested to hear SJR 7 at the request of the sponsor and with the permission of the President of the Senate.

CONSIDERATION OF SJR 7: Senator James Shaw, sponsor of SJR 7, walked the committee through the bill and presented written testimony in its support (see Exhibit 2).

PROPOSERS: Keith Anderson, President of the Montana Taxpayers Association, appeared in support of the bill. He stated they hope some agreement can be reached as to revenue estimates and revenue shifts and the like so we all know where we are with the budget. He testified we have had an increase of 2-1/2 times the budget compared to inflation, while Montana's population has gone up 18% and personal income has increased 281%. We have currently established a level of spending in excess of revenue. People are not in the mood for a tax increase--be it a sales tax, an income tax, or a tax on property. Private parties had to cut back, but business has been as usual in state government. Now state government must do the same. The result is in order and should be adopted. Paul Caruso, Chairman of the Board of First Security Bank in Helena, appeared in support of SJR 7 based on an economic point of view and the free enterprise system. He testified we are a capital poor state; agriculture is down; lumber is down--general business cannot support the taxes to support increases in state government.

OPPOSERS: Tom Schneider, Director of the Montana Public Employees Association, appeared in opposition to SJR 7. He believes the resolution will create some problems. Although it sounds good to cut 10% out of the budget, the codes still contain all of the things the legislature has determined should be required in government. If you cut 10% of the funding for those requirements, they will just have to do it with fewer people and worse working conditions. Although the whereas says it will cut 10% out of the current level, it is not cutting 10% out of the governor's 10% increase. It is not fair to double and not increase or at least maintain consistency in how you are going to provide delivery of those services. (See Exhibit 3 submitted by Mr. Schneider.) Terry Lynn Minow, on behalf of the Montana Federation of Teachers, appeared in opposition to this resolution. They feel it is impossible for the state to cut its budget by 10% while still meeting its obligations to its citizens, since citizens have a right to those obligations. (See witness sheet attached as Exhibit 4.)

QUESTIONS FROM THE COMMITTEE: Senator Crippen addressed Mr. Schneider with reference to page 2, subsection 3, and stated it was his understanding the governor's across-the-board 2% cut will not cut employees' salaries because they have been bargained for. He questioned whether this provision also provided for public employees' salaries. Mr. Schneider responded yes, although they are not saying the salaries are going to be cut; but salaries are the biggest expense, so if you don't cut salaries, you are cutting other things. Senator Crippen asked since he didn't like the 10% in certain areas, would he be in agreement that maybe we should cut 20-30% in some areas and nothing in other areas to average out. Mr. Schneider stated he will not say you should do that, but legislators should look at all of the areas of the state. He will not stand there and say he knows of areas where we have 30% available

for cutting, but he does know of areas where we need a 30% increase. Mr. Schneider stated if you are going to cut the delivery of services, then you have to cut the obligations. Senator Crippen asked since the employees collectively bargained with the governor, then the legislature cannot do anything but ratify what the governor has collectively bargained. Mr. Schneider believes the Collective Bargaining Act does not tie the hands of the governor. Senator Blaylock asked Senator Shaw if he said the taxes on an oil rig in North Dakota were \$15,000 less than in Montana. Senator Shaw stated they would save \$15,000 after they paid a \$10,000 trucking bill. Senator Blaylock asked where they were saving the \$15,000. Senator Shaw stated Montana property taxes would be \$15,000. If they pick that rig up and move it to North Dakota at a cost of \$10,000, they will save \$15,000. He knows the property taxes are less in North Dakota. Senator Blaylock asked if the \$15,000 that gets saved by pulling the rig from Montana is per year in North Dakota over what he would pay on property tax in Montana. Senator Shaw stated that is his understanding. Senator Crippen asked Senator Shaw about Mr. Schneider's concerns from the standpoint of programs. He is sympathetic to what we are trying to do but is concerned we are taking a meat axe to do it. He wonders if maybe we should cut some programs out entirely and keep others and consider raising them. Senator Shaw stated this is just a resolution, and the legislature can do anything they want to. Senator Mazurek asked Senator Shaw if this resolution were meant to apply to future bienniums or just this biennium. Senator Shaw responded it referred to the budget we are going to adopt at this session of the legislature, and it would cut 10% from the 1983 budget.

CLOSING STATEMENT: Senator Shaw stated he was surprised at the amount of support from state employees he got from this resolution. He believes this resolution gives us a tool we can work with. It doesn't blame the effect of the resolution on the governor; it puts it where it should be.

Hearing on SJR 7 was closed.

ACTION ON SB 66: Exhibit 5 was distributed, which is a quasi-grey bill including all of the amendments which have been suggested to the bill to date. Senator Mazurek suggested "attorneys' fees" be taken out to discourage litigation. Senator Shaw moved that SB 66 be amended as follows:

Page 4, lines 5 and 6.

Following: "action"

Strike: remainder of line 5 through "court" on line 6

The motion carried unanimously. Senator Pinsoneault moved that the language previously stricken by the committee (page 2, lines 19 and 20)

be reinserted and become new subparagraphs (c) and (d). Senator Brown stated he didn't believe we accomplished very much by doing that since we have the New York language. Senator Pinsoneault stated one thing with his experience with contracts is readable type and contrasts with paper are the most important. Senator Mazurek stated he agreed, but he thinks those standards are too vague. The motion to amend carried, with Senators Blaylock, Brown, Galt, and Mazurek voting in opposition. Senator Blaylock moved that the committee reconsider its action in adopting the amendment which inserted subparagraph (f) on page 3 relating to transfers of real estate. The motion carried unanimously. Senator Pinsoneault moved that the committee delete the amendment adding subparagraph (f) relating to transfers of real estate. Senator Crippen stated this was designed to apply to consumer contracts, and he doesn't see where real estate falls within that category. Senator Pinsoneault referred to buy-sell agreements; he agrees they don't fall within the consumer contract, but the contracts most people get involved in are to buy a car or real estate. Senator Mazurek believes you seriously jeopardize the possibility of this bill's passing by including real estate. Senator Daniels stated he doesn't feel wise enough to predict what will happen with real estate transactions if we adopt this bill. He is not smart enough to deviate totally from some of the traditional language used by lawyers. He believes real estate is evolutionary, not revolutionary. Senator Pinsoneault withdrew his motion. Senator Crippen stated we are all agreed we should make consumer contracts and all contracts and all laws more clear. Testimony says there is a trend toward doing that now. He would like to extend the effective date of the act so the people covered by this have a period of time to get their acts together. Senator Shaw moved that SB 66 be amended as follows:

Page 5, line 13.  
Following: "after"  
Strike: "January 1, 1986"  
Insert: "July 1, 1987"

The motion carried with Senators Mazurek and Yellowtail voting in opposition. Senator Shaw moved that SB 66 be recommended DO PASS AS AMENDED. The motion carried, with Senator Galt voting in opposition.

REQUEST FOR COMMITTEE BILL: Senator Towe stated that last December, the Libraries came and asked him to introduce a confidentiality act. He sent in his drafting request on December 18, 1985, and it did not come back until two or three days before the introduction deadline. He sent copies to the libraries, and he misplaced the bill in the shuffle. He asked that the committee agree to submit Exhibit 6 as a committee bill. Senator Crippen so moved, and the motion carried unanimously.

TABLING OF SB 125: Chairman Mazurek explained that Senator McCallum has introduced SB 125, which has been referred to the Senate Judiciary Committee for hearing. This bill relates to tests for drivers under the influence of drugs. Senator McCallum has since requested that the committee table the bill without hearing. Senator Brown moved that SB 125 be laid on the table pursuant to the request of the sponsor. The motion carried unanimously.

ACTION ON SB 105: Mr. Petesch distributed proposed amendments to SB 105 (see Exhibit 7). He stated the amendments adopt the suggestions from Senator Regan, although he did not include her amendment to change the codification instruction because it was unnecessary. Senator Towe moved the proposed amendments attached as Exhibit 7 be adopted. The motion carried unanimously. Senator Towe moved the bill be amended as follows:

Page 1, line 21.

Following: "child."

Strike: "This"

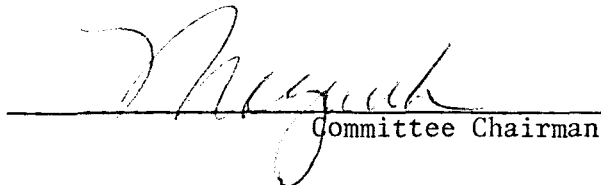
Insert: "(5) Unless otherwise provided in the decree, the"

In addition, Senator Towe's motion included an additional amendment to amendment No. 7 previously adopted by the committee indicating it be changed to read:

(2) In the event . . . that must must, in the absence of an agreement to the contrary, obtain comparable insurance . . . .

(Emphasis supplied.) The motion carried unanimously. Senator Pinsoneault moved SB 105 be recommended DO PASS AS AMENDED. The motion carried, with Senator Shaw voting in opposition.

There being no further business to come before the committee, the meeting was adjourned at 11:52 a.m.

  
\_\_\_\_\_  
Committee Chairman



DATE

January 25, 1985

COMMITTEE ON

Judiciary

SJR 745B 132

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
MARC RACICOT	Mt County Attys	132	<input checked="" type="checkbox"/>	<input type="checkbox"/>
VIRBEO BOURDEAU	County Attorneys CASCADE Countys		<input checked="" type="checkbox"/>	<input type="checkbox"/>
Carol Maghee	Montana Low Belles	SJR 7	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Tom Schneider	MPEA	132	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Tom Schneider	MPEA	SJR 7	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Keith Anderson	Montana	SJR 7	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<del>Paul D. [unclear]</del>	CITIZEN	SJR 7	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Jenny Mearns	Mt. E.O. of Teachers	SJR 7	<input type="checkbox"/>	<input checked="" type="checkbox"/>

(Please leave prepared statement with Secretary)



JAN 26

MONTANA ASSOCIATION  
OF  
CHIEFS OF POLICE

January 25, 1985



Senator Joe Mazurek, Chairman  
Senate Judiciary Committee  
Capitol Station  
Helena, MT 59620

Reference: Senate Bill 132, concerning aggravated assault.

Dear Senator Mazurek:

As Legislative Chairman for the Montana Association of Chiefs of Police, I would like to go on record that our association supports SB 132 as introduced/sponsored by Senator Mike Halligan. This bill if made law, will aid greatly all Montana law enforcement officers as it clarifies those "gray areas" we have had difficulty with for so many years especially s/s 2 (c) bodily injury to a peace officer, etc. . . . I might add this should aid our prosecutors as well in matters falling under these sections. I had planned on testifying at 10:00 a.m. on 1/25/85 before the Senate Judiciary in favor of this bill, but an emergency situation at my department prevented same. Please accept my apologies for failure to appear on this most important issue and make this letter a part of documentation in support of Senator Halligan's efforts on this bill.

Sincerely,

William J. Ware  
Chief of Police, Legislative Chairman  
Helena Police Department, Montana Association of Chiefs of Police

WJW/na

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 1  
DATE 012585  
BILL NO. SB 132

Mr. Chairman and members of the Judiciary Committee----For the record, I am Jim Shaw, Senator of District 12.

Gentlemen, this resolution lays the groundwork for holding increases in state government and balancing the budget at our feet and makes us responsible. It is time we took the "bull by the horns" and live up to the reason we are elected. If we don't live up to our responsibilities at this time, I assure you we will be back in Helena for a special session, raising taxes to cover the deficit that will appear as the result of, or failure to address these responsibilities.

Our projections, in my opinion, are that we are \$100,000,000 off. Gentlemen, this is serious. I also understand my constituents very well and that they are saying we have had enough. We could cut \$70,000,000 off of the '83 budget, back the budget down to \$650,000,000 without hurting state government one bit. It would force them, in my opinion, to more efficiency. I would suggest that at this point, department heads had better start cutting from the top down and not the bottom up as in the last four years.

An article in the Helena Independent Record states that state employees have doubled in that time.

Gentlemen, eastern Montana is in big trouble. It is time we back state government down so we don't get in the same spot as the federal government.

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 2  
DATE 012585  
BILL NO. SJR 7

I asked the taxpayers association how much we would have to raise taxes to balance the proposed budget with the supplemental that soon will be brought around. It seems like state income tax would have to be raised by 50% per year. I place a lot of our problems on the high tax structure.

In my conversations with people from every part of the state, they all tell you about businesses that have closed in the last two years. I know of oil rigs that are stacked out in Montana that will be picked up and moved to North Dakota at a cost of \$10,000, because they can save \$15,000 in property taxes in a year.

Senate House Joint Resolution 7 is a tool, if passed, that we can use for our deliberation when we get down to the budget and are trying to get out of here to go home. A tool I think we are going to need. I urge your support to this resolution to at least send a signal that we are going to try to cut state government and try to come up with a budget that won't raise taxes on the hard pressed citizens of the state of Montana.

I believe that we are going to have to broaden the tax base in the near future. Let us show to the people that we can say no to the "tail that is wagging the dog". Everywhere you go you hear of waste in our government. Let us try to put a stop to it.

# Work Load Doubling for SRS Technicians



**MONTHLY REPORTING - Lewis and Clark County ET Supervisor Linda Blixt believes massively increased work load is increasing error rates.**

MPEA's Eligibility Technician members are the first people to have contact with persons needing public assistance. By their own account, they are losing their ability to get people into the social service delivery system because of a massively increased work load.

To understand the scope of this problem, it is necessary to examine federally mandated changes in program administration; the legislature's understandable inability to foresee the impact on manpower of the federal government's new reporting system; and, the changing relationship between Eligibility Technicians and their clients.

In October of 1983, the federal government mandated monthly reporting for Food Stamp programs in the country. In the past, there had been just one certification in each 90 day period. In the state, as a whole, monthly reporting for the Food Stamp Program increased from

6000 cases per month to 22,000 cases per month, according to data provided by the Economic Assistance Division of SRS. Monthly reporting has become a part of the AFDC program as well. Prior to October, 1983, an ET would certify eligibility for AFDC then perform a redetermination every six months. Economic Assistance administrator Lee Tickell estimates that ET work load has increased by 30 percent as a function of the monthly reporting in the AFCD and Food Stamp programs.

According to SRS data, the public assistance caseload has increased by over 12 percent in the last year and its an increase which comes at a time when changes in federal requirements, like monthly reporting, have greatly increased the amount of time required to administer the programs.

The predicted impact has been to greatly delay a person's entry into the system. The long delays have greatly increased the use of the locally supported General Assistance program. Statewide, that program, which also requires monthly reporting, has increased 19.8 percent, according to SRS data. In Lewis and Clark County, the number of cases has increased from an average of 30 cases per month to 250 cases per month, according to Norm Waterman, Lewis and Clark County Welfare Director.

The increased work load has also meant an increase in the number of errors. The case error rate for the Food Stamp program, for example, increased from 11 percent to 19 percent in the past 6 months of monthly reporting, according to SRS data. An error creates additional work for the ET.

And, it is probably to error rate discussions in Congress that one should look for philosophical changes in program administration coming from the federal government. These are embodied in the Deficit Reduction Act of 1984. This legislation, signed by President Reagan July 18, attempts to increase revenues and savings in entitlement programs (AFDC, Food Stamps, etc.) in order to shrink the federal deficit. The bill raises \$50 billion in new revenue and \$13 billion from spending cuts over the next three years. During debate on this bill, the Senate bought nearly every House provision, but only after the House had consented to drop its provision to postpone AFDC error rate sanctions (monetary penalties). The House agreed, but the one AFDC proposal publicly debated after that agreement was the suspension of sanctions.

In short, the system is geared to reduce error rates, collect more data, and impose fines and penalties. It is the federal government's Office of Fraud and Abuse that provides the guiding philosophy behind monthly reporting, according to Tickell.

The work load created by this philosophy was made even worse by the last legislature. The major appropriations

bill in 1983, HB 447, limited the Eligibility Determination Program to 318.61 FTEs and \$6.2 million for personal services (salaries and fringe). That appropriation, however, includes 80 percent of the appropriation for combined county clerical staff and county directors' salaries. The legislation also contains language which states that no FTE spending authority could be transferred into or out of the Eligibility Determination Program. It was an unusual restriction considering the grants of flexibility won by the executive branch in so many other areas.

Additionally, the Office of the Legislative Fiscal Analyst sold its underestimation of caseload to the legislature - that's to be expected. But, more importantly, the LFA staff refused to adjust FTE figures to reflect the new work load which although not official was being discussed by SRS as a reality on the horizon.

As October of 1983 arrived the state was seriously shorthanded for the work at hand. Now October of 1984 is around the corner and ETs will be given many more changes as a result of passage of the Deficit Reduction Act - legislation which, according to Tickell, will broaden program participation.

All of these factors are having a devastating effect on ETs. An ET Supervisor from Lewis and Clark County explained that in her shop weekly training sessions had ended in the past but that present work loads had ended that practice. "The end result has been that our ETs feel more uncomfortable because forms, information, etc., are changing weekly and they are not able to keep up," the supervisor said.

"Time prevents us from having a helpful relationship with a client and important pieces of information are missed.

"Clients are more defensive and we don't have the time to tell them why we need a particular piece of information. We're doing Food Stamp eligibility in groups of 40 now.

"Because the ET has no time for developing a relationship, she seldom feels good about the genuinely positive aspects of her work; there's no positive reinforcement," an ET Supervisor told Montana Public Employee.

The confrontational nature of the relationship that has evolved since the paper albatross has also increased the number of times ETs have been threatened. One ET supervisor told Montana Public Employee she "fears for my family because sometimes I have to turn down someone who has needs for their family; they know my name and I'm in the phone book."

Adding to the work load, according to ET Supervisors in Lewis and Clark County, has been the recent trend to deinstitutionalize. "We have a great many more clients who in the past would have been provided care in an institutional setting. These people require more time."

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 3

DATE 012585

FILED SRS 7



**CRAMPED QUARTERS** — There are 11 Eligibility Technicians (10 shown above) working out of one small room on the 4th floor of the Silver Bow County Courthouse as part of the Social and Rehabilitation Services team. There is no ventilation in the room, no drinking facilities, no restroom to accommodate some 15 workers, and absolutely no fire escape. The hall leading to where these technicians work

not only is dark but filled with files making it nearly impossible for two people to pass in the hallway. The technicians exposed to this danger include, Betty Rasmussen, Marjorie Kautzman, Eleanor Pruett, Mary McGinnis, Christie Reed, Lynn Morarr, Katie Stimatz, Margie McCloskey, Darlene Miller, Collen Ker and Corita Thompson.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 3

DATE 012585

BILL NO. 5JR7

(This sheet to be used by those testifying on a bill.)

NAME: Jerry Lynn Minow DATE: 1-25-85

ADDRESS: Box 1246

PHONE: 442-2123

REPRESENTING WHOM? MT Federation of Teachers

APPEARING ON WHICH PROPOSAL: SJR 7

DO YOU: SUPPORT?  AMEND?  OPPOSE?

COMMENTS: \_\_\_\_\_  
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PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 4  
DATE 012585  
BILL NO. SJR 7

SENATE BILL NO. 66

HALLIGAN

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING CONSUMER CONTRACTS TO BE WRITTEN IN PLAIN LANGUAGE; PROVIDING FOR COVERAGE, EXEMPTIONS, AND REMEDIES; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Short title. [This act] may be cited as the "Plain Language in Contracts Act".

Section 2. Definitions. As used in [this act], unless the context requires otherwise, the following definitions apply:

(1) "Agreement" means any writing that is substantially prepared in advance of a consumer transaction and which a seller, lessor, or lender furnishes to a consumer for the consumer to sign in connection with that transaction.

(2) "Consumer" means an individual who borrows money or leases or obtains property or services under a written agreement.

(3) "Consumer contract" means an agreement for the sale, lease, or loan of money, property, or services primarily for personal, family, or household purposes.

purposes of [this act], consumer contract includes an advance for the purpose of facilitating payment of a premium, or a loan against the cash surrender value of a life insurance policy.

(4) "Seller, lessor, or lender" means a person who regularly sells, lets, or lends in connection with consumer contracts.

Section 3. Requirements for contracts. (1) A consumer contract must be written in plain language.

(2) A consumer contract is written in plain language if it: substantially complies with all of the following: (a) is written in a clear and coherent manner using words with common and everyday meanings; and (b) is appropriately divided and captioned by its various sections"

(c) It uses personal pronouns or the actual or shortened names of the parties to the contract or both, when referring to those parties.

(d) It uses simple, active verb forms.

(e) It uses type of readable size.

(f) It uses ink that contrasts with the paper.

(g) It heads sections and other subdivisions with captions in boldface type or that otherwise stand out significantly from the text.

(h) It uses layout and spacing that separate the paragraphs and sections of the contract from each other and

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 5

DATE 012585

BILL NO. SB 66



1 ~~from the borders of the paper.~~  
2 ~~(1) It is written and organized in a clear and~~  
3 ~~coherent manner.~~

4 Section 4. Scope. (1) Except as provided in subsection  
5 (2), [section 3] applies to any agreement ~~signed~~ in  
6 connection with a consumer contract entered into in this  
7 state between a consumer who is a resident of this state at  
8 the time of the transaction and a seller, lessor, or lender.  
9 (2) [Section 3] does not apply to:

10 (a) consumer contracts in which the value of the  
11 money, property, or services bought, leased, or borrowed  
12 exceeds \$50,000 at the time of the contract;

13 (b) consumer contracts in which securities or  
14 commodities accounts are bought, leased, or borrowed;

15 (c) consumer transactions subject to the provisions of  
16 33-15-321 through 33-15-329; ~~or~~

17 (d) a seller, lessor, or lender, if it is a government  
18 agency or instrumentality;

19 (3) The use of specific language expressly required or  
20 authorized by a court decision, state or federal statute or  
21 administrative rule, or governmental agency is not a  
22 violation of [this act]; nor is a legal description of real  
23 property a violation of [this act].

24 Section 5. Consumer's remedy. (1) Except as otherwise  
25 provided in [section 6], if an agreement does not comply

26 "(c) the provision of public utility service under tariffs  
27 approved by the public service commission; or  
28 (f) a transfer of real estate."

1 with the requirements of [section 3], the seller, lessor, or  
2 lender is liable to a consumer who signed the agreement in  
3 an amount equal to:

4 (a) \$50 plus any actual damages; and  
5 (b) costs of the action, ~~together with reasonable~~  
6 ~~attorney fees as determined by the court.~~

7 (2) A consumer may bring an action under this section  
8 in any court of competent jurisdiction.

9 Section 6. Limitations on remedies. (1) A consumer may  
10 not bring an action under [section 5] after the date on  
11 which his obligations in connection with the agreement are  
12 scheduled to be finally performed.

13 (2) No seller, lessor, or lender is liable under  
14 [section 5] if a good faith attempt is made to comply with  
15 requirements of [section 3].

16 (3) Noncompliance with the requirements of [section 3]  
17 does not make a consumer transaction void or voidable if it  
18 is otherwise legal, nor may a consumer raise noncompliance  
19 as a defense to an obligation to perform in connection with  
20 the transaction.

21 (4) In a class action brought under [section 5], the  
22 seller, lessor, or lender is liable under [section 5] for  
23 not more than \$10,000 plus actual damages.

24 (5) In any individual transaction, if there is more  
25 than one consumer who is party to a single-consumer

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 20

DATE 012585

BILL NO. SB 66



1 contract, only one award of statutory damages may be made  
 2 for that transaction.  
 3 (6) No consumer may bring an action under [this act]  
 4 on a contract if the consumer was represented at the signing  
 5 of the contract by an attorney.

(7) Punitive damages may not be assessed in an action brought  
 under (this act)."

6 Section 7. Remedies cumulative -- waiver void. (1)  
 7 Nothing in [this act] precludes a consumer from making any  
 8 claim or raising any defense that would have been available  
 9 to the consumer if [this act] were not in effect.

10 (2) A consumer may not waive the rights provided by  
 11 [this act], and any such waiver is void.

12 Section 8. Applicability. This act applies to consumer  
 13 contracts entered into after January 1, 1986. 070187

-End-

SENATE JUDICIARY COMMITTEE  
 EXHIBIT NO. 5  
 DATE 012989  
 BILL NO. SB 66

AMENDMENTS TO SB 66:

1. Page 1, line 25.  
Following: "purposes."  
Strike: remainder of line 25 through "policy." on line 4, page 2

2. Page 2, line 11.  
Following: "it"  
Strike: remainder of line 11 through "manner" on line 3, page 3  
Insert: ":

(a) is written in a clear and coherent manner using words with common and everyday meanings; and

(b) is appropriately divided and captioned by its various sections"

3. Page 3, line 5.  
Following: "agreement"  
Strike: "signed"

4. Page 3, line 16.  
Following: ";"  
Strike: "or"

5. Page 3, line 18.  
Following: "instrumentality"  
Strike: "."  
Insert: ";"

6. Page 3, line 19.  
Following: line 18  
Insert: "(e) the provision of public utility service under tariffs approved by the public service commission; or

(f) a transfer of real estate."

7. Page 5, line 6.  
Following: line 5  
Insert: "(7) Punitive damages may not be assessed in an action brought under (this act)."

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 5  
DATE 012 1989  
BILL NO. SB 66

1 \_\_\_\_\_ BILL NO. \_\_\_\_\_

2 INTRODUCED BY \_\_\_\_\_

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR  
5 CONFIDENTIALITY OF LIBRARY RECORDS; AMENDING SECTIONS  
6 2-6-101 AND 2-6-102, MCA."

7

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 NEW SECTION. Section 1. Short title. [This act] may  
10 be cited as the "Montana Library Records Confidentiality  
11 Act".

12 NEW SECTION. Section 2. Definitions. As used in  
13 [section 3], the following definitions apply:

14 (1) "Library" means a library that is established by  
15 the state, a county, city, town, school district, or a  
16 combination of those units of government, a college or  
17 university, or any private library open to the public.

18 (2) "Library records" means any document, record, or  
19 any other method of storing information retained, received,  
20 or generated by a library that identifies a person as having  
21 requested, used, or borrowed library material or other  
22 records identifying the names of library users. Library  
23 records does not include nonidentifying material that may be  
24 retained for the purpose of studying or evaluating the  
25 circulation of library materials in general.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 6

DATE 01/25/85

BILL NO. Committee Bill



1           NEW SECTION. Section 3. Nondisclosure of library  
 2 records. (1) No person may release or disclose a library  
 3 record or portion of a library record to any person except  
 4 in response to:

5           (a) a written request of the person identified in that  
 6 record, according to procedures and forms giving written  
 7 consent as determined by the library; or

8           (b) an order issued by a court of competent  
 9 jurisdiction, upon a finding that the disclosure of such  
 10 record is necessary <sup>because</sup> ~~to protect the public safety or to~~  
 11 ~~prosecute a crime~~ or that the merits of public disclosure  
 12 clearly exceed the demand for individual privacy.

13           (2) A library is not prevented from publishing or  
 14 making available to the public reasonable statistical  
 15 reports regarding library registration and book circulation  
 16 if those reports are presented so that no individual is  
 17 identified therein.

18           Section 4. Section 2-6-101, MCA, is amended to read:

19           "2-6-101. Definitions. (1) Writings are of two kinds:

20           (a) public; and

21           (b) private.

22           (2) Public writings are:

23           (a) the written acts or records of the acts of the  
 24 sovereign authority, of official bodies and tribunals, and  
 25 of public officers, legislative, judicial, and executive.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 6

DATE 012585

BILL NO. Committee Bill

1 whether of this state, of the United States, of a sister  
2 state, or of a foreign country;

3 (b) public records, kept in this state, of private  
4 writings, except as provided in [section 3].

5 (3) Public writings are divided into four classes:

6 (a) laws;

7 (b) judicial records;

8 (c) other official documents;

9 (d) public records, kept in this state, of private  
10 writings.

11 (4) All other writings are private."

12 Section 5. Section 2-6-102, MCA, is amended to read:

13 "2-6-102. Citizens entitled to inspect and copy public  
14 writings. (1) Every citizen has a right to inspect and take  
15 a copy of any public writings of this state, except as  
16 provided in [section 3] and as otherwise expressly provided  
17 by statute.

18 (2) Every public officer having the custody of a  
19 public writing which a citizen has a right to inspect is  
20 bound to give him on demand a certified copy of it, on  
21 payment of the legal fees therefor, and such copy is  
22 admissible as evidence in like cases and with like effect as  
23 the original writing."

24 NEW SECTION. Section 6. Penalty. Any person who  
25 violates [section 3] is guilty of a misdemeanor and is

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 6

DATE 012585

BILL NO. Committee 1411

1 liable to the person identified in a record that is  
2 improperly released or disclosed. The person identified may  
3 bring a civil action for actual damages or ~~\$250~~<sup>100</sup>, whichever  
4 is greater, reasonable attorney fees, and the costs of  
5 bringing the action.

6 NEW SECTION. Section 7. Codification instruction.  
7 Sections 1 through 3 and 6 are intended to be codified as an  
8 integral part of Title 22, chapter 1, and the provisions of  
9 Title 22, chapter 1, apply to sections 1 through 3 and 6.

-End-

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 6  
DATE 012385  
BILL NO. Committee Bill

PROPOSED AMENDMENTS TO SB 105:

1. Title, line 5.

Following: "PROVISION"

Strike: remainder of line 5 through "OBTAIN" on line 6

Insert: "COVERING"

2. Title, line 6.

Following: "HEALTH"

Strike: remainder of line 6 through "CHILDREN" on line 7

Insert: "CARE COSTS"

3. Page 1, line 10.

Following: "to"

Strike: "require"

Insert: "contain"

4. Page 1, line 11.

Following: line 10

Strike: "insurance coverage."

Insert: "care provisions. (1)"

Following: "judgment"

Insert: ", decree,"

5. Page 1, line 12.

Following: "establishing a"

Strike: "temporary or"

6. Page 1, line 13.

Following: "of"

Strike: "an existing"

Insert: "a final"

7. Page 1, line 14.

Following: "include"

Strike: remainder of line 14 through "child." on line 21

Insert: "a provision apportioning health care costs for the minor children to either or both parties. If either party has available through an employer or other organization health insurance coverage for the child or children for which the premium is partially or entirely paid by the employer or organization, the judgment, decree, or order must contain a provision requiring that coverage for the child or children be continued or obtained.

(2) In the event that health insurance required in a child support judgment, decree, or order becomes unavailable to the party who is to provide it through loss or change of employment or otherwise, that party must obtain comparable insurance or request that the court modify the requirement.

(3) All temporary child support orders must contain a provision requiring the party who has health insurance in effect for the child or children of the parties to continue the insurance coverage pending final disposition of the case.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 7

DATE 012-285

BILL NO. SB 105

(4) The parties may by written agreement provide for the health care coverage required by this section, subject to the approval of the court."

8. Page 1, line 21.

Following: "child."

Strike: "This"

Insert: "(5) The"

9. Page 1, line 22.

Following: line 21

Strike: "insurance"

Insert: "care"

Following: "coverage"

Insert: "required by this section"

10. Page 1, line 25.

Following: line 24

Insert: "(6) As used in this section "health care costs" means the costs for health insurance premiums, insurance deductible amounts, or co-insurance, as well as reasonable and necessary hospital, medical, dental, orthodontal, ocular, and mental health service expenses not covered by insurance."

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 7

DATE 11/20/05

BILL NO. SB 705



# STANDING COMMITTEE REPORT

Page 1 of 2

January 25

19 85

MR. PRESIDENT

We, your committee on SENATE JUDICIARY

having had under consideration SENATE BILL No. 66

first reading copy ( white )  
color

## REQUIRING PLAIN LANGUAGE IN CONSUMER CONTRACTS

Respectfully report as follows: That SENATE BILL No. 66

be amended as follows:

1. Page 1, line 25.

Following: "purposes."

Strike: remainder of line 25 through "policy." on line 4, page 2

2. Page 2, line 11.

Following: "if"

Strike: remainder of line 11 through "forms." on line 13

Insert: ":

(a) It is written in a clear and coherent manner using words with common and everyday meanings.

(b) It is appropriately divided and captioned by its various sections."

Remember: subsequent subsections

3. Page 2, line 21.

Strike: lines 21 through 25 and lines 1 through 3 on page 3 in their entirety

4. Page 3, line 5.

Following: "agreement"

Strike: "signed"

5. Page 3, line 16.

Following: ";

Strike: "or"

~~HOUSE~~

~~COMMITTEE~~

CONTINUED

Chairman.

Page 2 of 2

SENATE BILL NO. 66

6. Page 3, line 13.

Following: "instrumentality"

Strike: "."

Insert: ";

7. Page 3, line 19.

Following: line 19

Insert: "(e) the provision of public utility service under tariffs approved by the public service commission; or

(f) a transfer of real estate."

8. Page 4, lines 5 and 6.

Following: "action"

Strike: remainder of line 5 through "court" on line 6

9. Page 5, line 6.

Following: line 5

Insert: "(7) Punitive damages may not be assessed in an action brought under (this act)."

10. Page 5, line 13.

Following: "after"

Strike: "January 1, 1986"

Insert: "July 1, 1987"

AND AS AMENDED

DO PASS

CLERICAL

Date: 1/26

Senate Bill 66

Time: 12:03

In accordance with Joint Rule 3-7(b) the following clerical errors may be corrected:

Standing Committee Report

Amendment # 2

(a) through (d) now should begin with a lower case letter

(a) through (c) now should end with semicolons,

Reason: Amendment # changes the lead-in of the outline from a complete sentence to a dependent clause. In the code, both lead-in and the outlined items must be complete sentences in order for the outlined items to stand alone as sentences

1/25/85

  
Sponsor

MER

Secretary of Senate  
or  
Chief Clerk

Legislative Council

# STANDING COMMITTEE REPORT

Page 1 of 3

January 25

19 85

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration SENATE BILL No. 105

first reading copy ( white )  
color

## HEALTH INSURANCE COVERAGE IN CHILD SUPPORT ORDERS

Respectfully report as follows: That SENATE BILL No. 105

be amended as follows:

1. Title, line 5.

Following: "PROVISION"

Strike: remainder of line 5 through "OBTAIN" on line 6

Insert: "COVERING"

2. Title, line 6.

Following: "HEALTH"

Strike: remainder of line 6 through "CHILDREN" on line 7

Insert: "CARE COSTS"

3. Page 1, line 10.

Following: "to"

Strike: "require"

Insert: "contain"

4. Page 1, line 11.

Following: line 10

Strike: "insurance coverage"

Insert: "care provisions"

Following: "coverage."

Insert: "(1)"

Following: "judgment"

Insert: ", decree,"

~~XXXX~~

~~XXXXXXXXXX~~

CONTINUED

Chairman.

SENATE BILL NO. 105

5. Page 1, line 12.  
Following: "establishing a"  
Strike: "temporary or"

6. Page 1, line 13.  
Following: "of"  
Strike: "an existing"  
Insert: "a final"

7. Page 1, line 14.  
Following: "include"  
Strike: remainder of line 14 through "child." on line 21  
Insert: "a provision apportioning health care costs for the minor children to either or both parties. If either party has available through an employer or other organization health insurance coverage for the child or children for which the premium is partially or entirely paid by the employer or organization, the judgment, decree, or order must contain a provision requiring that coverage for the child or children be continued or obtained.

(2) In the event that health insurance required in a child support judgment, decree, or order becomes unavailable to the party who is to provide it through loss or change of employment or otherwise, that party must, in the absence of an agreement to the contrary, obtain comparable insurance or request that the court modify the requirement.

(3) All temporary child support orders must contain a provision requiring the party who has health insurance in effect for the child or children of the parties to continue the insurance coverage pending final disposition of the case.

(4) The parties may by written agreement provide for the health care coverage required by this section, subject to the approval of the court."

8. Page 1, line 21.  
Following: "child."  
Strike: "This"  
Insert: "(5) Unless otherwise provided in the decree, the"

SENATE BILL NO. 105

9. Page 1, line 22.

Following: line 21

Strike: "insurance"

Insert: "care"

Following: "coverage"

Insert: "required by this section"

10. Page 1, line 25.

Following: line 24

Insert: "(6) As used in this section "health care costs" means the costs for health insurance premiums, insurance deductible amounts, or co-insurance, as well as reasonable and necessary hospital, medical, dental, orthodontal, ocular, and mental health service expenses not covered by insurance."

AND AS AMENDED

DO PASS

CLERICAL

Date: 1/26/85

S Bill 105

Time: 11:30 a.m.

In accordance with Joint Rule 3-7(b) the following clerical errors may be corrected:

Standing Committee Rept 1/25/85

#10. Inset: "(6) As... section, .. coinsurance..."

#10 sp. "orthodontic"

(wd)

1/25/85

Maguire  
Sponsor

Secretary of Senate  
or  
Chief Clerk

M. Novak  
Legislative Council