

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

January 29, 1985

The sixteenth meeting of the Senate Judiciary Committee was called to order at 10:06 a.m. on January 29, 1985, by Chairman Joe Mazurek in Room 325 of the Capitol Building.

ROLL CALL: All committee members were present.

CONSIDERATION OF SB 185: Senator Les Hirsch, sponsor of SB 185, introduced the bill to the committee (see written testimony attached as Exhibit 1).

PROPOSERS: Julie Begler, Real Estate Loan Officer at Norwest Bank in Helena and a member of the Montana Bankers Association, presented written testimony in support of the bill and gave a brief example of a typical foreclosure proceeding (Exhibit 2). David Brown, former Chairman of the Montana Bankers Association Real Estate Committee, appeared in support of this bill. He testified that the Small Tract Financing Act which was enacted in 1962 provides an excellent medium for banks to secure their transactions. Trust indentures chiefly revolve around residential property, and some of the restrictions on fees envisioned those usages. He is in favor of passing this bill because commercial borrowers are racking up large fees with them and then reinstating their loan, and there's nothing they can do about it. Les Alke, on behalf of the Montana Bankers Association, appeared in support of the bill (see witness sheet attached as Exhibit 3). He testified that it is not only the banks that would benefit from this, as all mortgage lenders suffer the same.

OPPOSERS: None.

QUESTIONS FROM THE COMMITTEE: Senator Crippen asked what reinstatement causes you to do extra for expenses that taking it to foreclosure doesn't do. Mr. Brown stated that when they make a loan, they make sure they have adequate value in the property. If they own the property, they are in a position to recover those costs. In a reinstatement, it has become a game to some people to string the bank along. Senator Crippen asked what portion of their loan portfolio plays games. Mr. Brown responded there are some people who know the law and take advantage of it. Senator Crippen asked if they felt they were adequately compensated with the 5% when they take it to foreclosure. Mr. Brown responded yes. Senator Crippen stated he is reluctant to put no cap on

it when you have a cap when you take it to foreclosure. Senator Mazurek asked if there would be any value in distinguishing between residential and commercial properties. Ms. Begler stated she thinks we are seeing the problem on both ends: the commercial and the home improvement loans. Senator Shaw stated he was under the impression this was a small tract. He asked if it could pertain to a ranch of a million dollars. Ms. Begler responded that it must be a tract of 15 acres or less.

CLOSING STATEMENT: Senator Hirsch reminded the committee that they feel comfortable with the 5% cap, he would be happy if they handled the reinstatement proceedings the same that they do the mortgage proceedings.

Hearing on SB 185 was closed.

CONSIDERATION OF HB 109: Representative Ted Schye, sponsor of HB 109, stated this is a bill he was asked to carry by the county attorney and the judge from Glasgow (see Exhibit 4). He stated this concept passed the House last session and came to the Senate and ran into some difficulties. He has submitted it again and hopes we can discuss some of the problems. There appears to be a conflict in two code sections: Sections 46-8-113 and 46-18-232, MCA. One allows the judge to allow as part of the sentence, the sentencing court costs. The other section says if the judge has appointed a court-appointed attorney, he cannot apportion court costs. They feel these two areas in the law are in conflict.

PROPONENTS: None.

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: Senator Galt asked what kind of a default page 2, line 5, refers to. Senator Schye responded he did not know. Senator Mazurek stated a contumacious default is flagrant disregard. Senator Towe asked what the problem before was. Senator Schye said he didn't hear the debate before the Senate committee last session, so he didn't know.

CLOSING STATEMENT: None.

Hearing on HB 109 was closed. Chairman Mazurek then turned the chair over to Vice Chairman Daniels in order that he might introduce the next bill.

CONSIDERATION OF SB 235: Senator Joe Mazurek, sponsor of SB 235, stated this bill was introduced at the request of District Judge Henry Loble in Helena, who ran into a problem in Lewis and Clark County in conservatorship proceedings. When the conservator wants to have another person

appointed to manage the affairs of an incapacitated person, the present statute requires the judge to appoint a number of people to examine the incapacitated person. The judge must appoint: (1) a physician; (2) a visitor or next friend who from a layman's standpoint, visit with the alleged incapacitated person; and (3) an attorney to represent the person. The problem is many physicians or medical doctors don't keep up in the area of mental health or disability. Senator Mazurek testified that this bill would extend the list of persons who would be authorized by the legislature to professional persons to examine the person as designated in Section 53-21-102, MCA. It would allow clinical psychologists who are licensed by the state of Montana to conduct the examination. Clinical psychologists are allowed presently to examine persons for purposes of commitment in the state hospital; we also allow them to testify in criminal proceedings. Senator Mazurek stated that Judge Loble believes they have more current ability to conduct these examinations, although the judge could still select a physician if he thought it were warranted.

PROPOSERS: None.

OPPOSERS: None.

QUESTIONS FROM THE COMMITTEE: Senator Pinsoneault stated he would like to rise with Senator Mazurek as a proponent having been involved with several of these matters himself. He believes that what is being proposed is an improvement. Senator Crippen asked that Senator Mazurek again define those types of persons who would now be allowed to conduct the examination. Senator Mazurek stated they are defined in Section 53-21-106, MCA, and included those who are certified as professional persons, including medical doctors or persons who have been certified by the Department of Institutions. That definition gives the department rule-making authority to require certain types of education and training. What it amounts to is a clinical psychologist licensed by the Department of Institutions as a professional person. Senator Crippen asked if the incapacitated person's counsel has a right to object if he would prefer a physician. Senator Mazurek responded yes. Senator Towe stated he was the author of the original code provision cited here. What they did at that time was expand the people that can testify to mental illness to others than doctors. Although the designation is by the department, but is generally at the recommendation of the mental health center. Senator Towe stated he found the bill perfectly acceptable.

CLOSING STATEMENT: None.

Hearing on SB 235 was closed, and Senator Mazurek resumed chairing the committee.

ACTION ON SB 54: Proposed amendments to SB 54 were distributed to the committee (Exhibit 5). Mr. Petesch explained that the amendments, with the exception of Nos. 2 and 3, were previously adopted by the committee. Senator Mazurek stated that by this bill, you are taking a definition from the reporting sections and changing it to accomplish what you want to do in the penalty sections. Senator Towe stated he is very pleased with the bill. Senator Crippen stated, as a non-lawyer, he feels better because he thinks the exploitation thing was wide open and this narrows it down some. Senator Mazurek stated the word that troubles him is "use." Senator Daniels stated he is not in favor of this type of legislation under any circumstances. He questioned what it is about the age of 60 that suddenly makes you any different from someone 88 or any other age. He believes this statute is broad enough that elder people will insist the county attorney prosecute under any type of situation. He believes that when people get more elderly, they get more paranoid feelings. He doesn't feel this type of concern should be considered by a legislative group. Senator Crippen stated he likes it. Senator Towe moved the remaining amendments be adopted. Senator Pinsoneault stated he thinks the age may be arbitrary and a lot of laws are arbitrary, but he thinks the bill has a good intent and feels the committee should give it a try; if it turns out to be a dabraule in two years, the legislature can amend it. Senator Crippen questioned whether there were a lot of this going on. Senator Towe responded the bill was brought to him by the senior citizens themselves. He has seen it from both sides, and as with any law, it can be abused, but from the examples of where this has happened, it obviously is an issue which needs to be addressed. Senator Mazurek stated he thinks the amendments help, but he thinks there is some potential problem with keeping exploitation in because the term is pretty vague. He recognizes the problem, agrees it exists, and in appropriate circumstances believes it ought to be addressed. Senator Daniels asked in what respect are our present laws inadequate to cover these situations that do arise. Senator Towe responded the present law would probably not make it a crime if someone by undue influence caused an individual to do some of this without laying a hand on someone. Senator Brown stated he doesn't have any problem with giving special treatment to someone who might be classified as elderly, but he doesn't feel just because you are 60 years old is reason enough. Senator Towe reminded the committee the county attorney will have discretion to decide what's unreasonable. Senator Mazurek suggested we may want to amend the defition of what's unreasonable. Senator Mazurek suggested amending the definition of exploitation. Senator Yellowtail spoke to the amendment and stated the amendment seems to clarify the definition of exploitation. The motion to adopt the remaining amendments carried unanimously. Senator Towe moved SB 54 be amended as follows:

Page 2, line 9.

Following: "age"

Insert: "and unable because of physical or mental condition
to adequately protect himself or his property"

Senator Mazurek stated we are weakening the reporting requirements to strengthen the penalty provision. The motion to amend carried unanimously. Senator Mazurek stated the only question that remains is whether we want to leave exploit in the penalty provisions. He further stated our objective is good, but we have the potential problem of dealing with the person over 60. There is a potential for abuse, and we have tightened it up substantially. Senator Towe moved SB 54 be recommended DO PASS AS AMENDED. Senator Shaw stated if you had to amend the bill that much, it must not be good, so the committee should kill it. Senator Towe responded this bill was brought into this committee to work on the language of the bill, and it has the support of another committee, but the purpose was not to consider if the bill should or shouldn't pass, but to work on the language. Senator Brown stated he still shares Senator Daniels' feeling about this whole idea of legislation, but he has been placated by Senator Towe's amendment. Senator Brown moved as a substitute motion SB 54 be amended as follows:

Page 2, line 21.

Following: "abuses"

Strike: ", "

Insert: "or"

Following: "neglects"

Strike: ", or exploits"

Senator Mazurek stated that would eliminate the penalty for exploitation. Senator Towe stated he opposed the motion for the reasons previously given. Senator Yellowtail stated he also opposed the motion, believing that although there are cases for misinterpretation of the word "exploitation," there are many cases of clear exploitation. Senator Pinsoneault also opposed the motion. The motion to amend failed (see roll call vote attached as Exhibit 6). Senator Towe's motion to recommend the bill DO PASS AS AMENDED was then considered and carried with Senator's Daniels, Galt, and Shaw voting in opposition.

FURTHER CONSIDERATION OF SB 110: Proposed amendments from the Montana Trial Lawyers Association (Exhibit 7) and from Blue Cross and Blue Shield (Exhibit 8) were distributed to the committee. Senator Towe stated he was pleased with the proposal made by the Montana Trial Lawyers Association, particularly the one that says it doesn't apply unless the parties have been represented by counsel and shown by the counsel's signature. Karl Englund, from the Montana Trial Lawyers Association, explained their proposal has divided section 4 into two

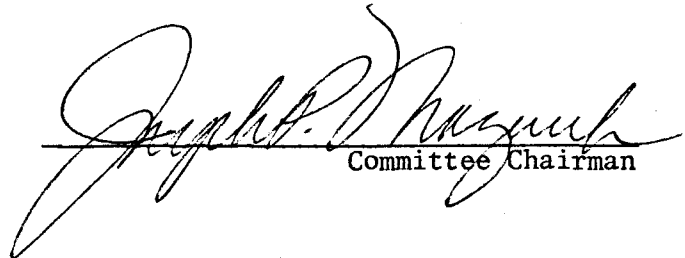
subsections; anyone can agree to arbitrate now; subsection 2 deals with future arbitration; they took "irrevocable" out; in terms of exceptions to the act, the three with which they are most concerned are a, b, and c; the two exceptions on the second page are generally found in states that have adopted the uniform act; the Division of Workers' Compensation believes their laws would supersede this; the Public Employees' Bargaining Act would prevent anything under (e); (d) and (e) are questions of law, not so much questions of policy. John Alke, representing Blue Shield, stated they are opposed to the amendments and think they are unnecessary. He stated that actions for personal injury are always exempt, and any tort action will be outside the scope of the act. He believes (c) essentially exempts all contracts, as few people have their lawyers negotiate their contracts and then sign for them. Mr. Alke stated he does not believe the proposed amendments accomplish what the Trial Lawyers are suggesting. He stated the Uniform Arbitration Act and the concept of bad faith have no parity. He stated it is a uniform act, so every time you put an exception in there, it will not be a uniform act. Senator Towe asked how you are going to protect the individual who is not on an equal bargaining position. Mr. Alke responded you cannot deprive a Montana citizen of a tort remedy in the Montana courts if a tort were committed in Montana. Steve Brown, representing Blue Cross, stated the purpose of the bill is to zero in on those types of issues without destroying the concept of bad faith. He suggested the committee look at the summary of how the uniform law has been amended. It is clearly the minority of states who have adopted it without any exceptions. Senator Mazurek questioned how a health service organization would use arbitration. Mr. Alke responded they would use it if they had a specific problem, as all of their groups are trying to limit the maximum exposure of the group. Mr. Brown responded you cannot amend the constitution through this act; you can't take away constitutional rights through this act; he suggests you can't force someone to arbitrate outside the state of Montana either. Senator Towe moved the proposed amendments by the Montana Trial Lawyers Association be adopted. Senator Pinsoneault stated that when you have a uniform act, he is suspect of people that try to amend things out. He asked Mr. Petesch if there have been that many amendments or changes to the uniform act in other states. Mr. Petesch responded that 17 states have carved out amendments. He further explained that what the Trial Lawyers have proposed are in at least one of these states. Senator Mazurek stated the concern for uniformity is particularly important when you get into the procedural portions of the act. Senator Towe stated if you get the uniform laws, they tell you exactly where states have changed the uniform act. The motion to adopt the Montana Trial Lawyers Association's proposed amendments failed (see roll call vote attached as Exhibit 9). Senator Towe moved SB 110 be recommended DO NOT PASS. The motion was withdrawn in order to allow Senators Daniels and Pinsoneault additional time to review the bill.

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ACTION ON SB 235: Senator Shaw moved SB 235 be recommended DO PASS.
The motion carried unanimously.

ACTION ON SB 104: Proposed amendments were distributed to the committee (Exhibit 10). Mr. Petesch explained that all these amendments do is address the concern expressed by Senator Yellowtail that in certain places the term "clerk" was used while in others the term "jury commissioner" was used. Senator Shaw moved the proposed amendments be adopted. The motion carried unanimously. Senator Brown moved SB 104 be recommended DO PASS AS AMENDED. The motion carried unanimously.

There being no further business to come before the committee, the meeting was adjourned at 11:55 a.m.


Committee Chairman

SB-185

SENATOR LES HIRSCH

Senate Judiciary
10:00 a.m.

Tuesday
Jan. 29, 1985

The small tract financing act allows trust indentures as an alternative to real estate mortgages as security for loans. It may be used as the security vehicle for tracts of land not exceeding 15 acres. There is no limit on the size of a loan which may be secured by a trust indenture.

In fact, entire housing projects, shopping centers and other large commercial ventures are financed in the millions of dollars with the security being trust indentures. Any limit on attorney's and trustee's fees when a loan is reinstated by payment before the actual sale under foreclosure of a trust indenture is unrealistic under any circumstances, but particularly when large projects involving millions of dollars are involved.

In larger transactions the advertisement for sale does not happen until substantial problems have been encountered and proper preparations in anticipation of a contest are made by the lender's attorney.

All loan documents must be reviewed. There may be questions of law to be researched. A title report must be ordered and analyzed. When any questions or problems arise, research is necessary, because there are substantial amounts of money involved.

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EXHIBIT NO. 1
DATE 012985
BILL NO. SB 185

The payment record of the borrower is carefully reviewed to avoid any inaccuracies in the foreclosure sale proceedings. Interest may have to be recalculated. Taxes, penalty and interest on county advalorem taxes must be determined and allowed for in virtually all foreclosures.

Hazard insurance premiums may have been paid by the lender for his protection, although they are the obligation of the borrower. These matters have to be investigated and sometimes require communicating with people out of state.

Arrangements must be made for a place of sale and for someone to post notices of the sale. A drafting of the notice can take a considerable amount of time if there has been a long series of delinquencies and catch-up payments are involved, or due to other problems.

Publication arrangements must be made for the notice of sale. All of these responsibilities, and often many others, including constant negotiations with the borrowers attorney and sometimes other attorneys, such as attorney for a purchaser of the property, are responsibilities of the lenders attorney whether or not he may be the trustee.

The lender's attorney can put in several thousand dollars of time getting to the date of sale. It is not fair, reasonable or realistic to require that the lender rather than the defaulting borrower, who caused the problem, be limited in recovering attorney's fees if the borrower reinstates the loan by making payments up-to-date at some point in the four month period before sale.

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DATE 012985

BILL NO. SB 185

Typically, the borrower incurs a number of defaults during a year, two, or three years prior to the commencing of foreclosure proceedings. The fault clearly lies with the borrower and he should have to pay whatever reasonable and customary attorney fees are charged to commence foreclosure proceedings.

Any expense incurred by a lender must be passed on to the consumer. Why should other borrowers who pay their payments promptly each month, or when due, be required to subsidize those few individuals who fail to make their payments on time?

Attached are copies of the Small Tract Financing Act.

SENATE JUDICIARY COMMITTEE
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DATE 012985
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71-1-301. Short title. This part may be cited as the "Small Tract Financing Act of Montana".

History: En. Sec. 1, Ch. 177, L. 1963; R.C.M. 1947, 52-401.

71-1-302. Policy. Because the financing of homes and business expansion is essential to the development of the state of Montana and because such financing, usually involving areas of real estate of not more than 15 acres, has been restricted by the laws relating to mortgages of real property and because more such financing of homes and business expansion is available if the parties can use security instruments and procedures not subject to all the provisions of the mortgage laws, it is hereby declared to be the public policy of the state of Montana to permit the use of trust indentures for estates in real property of not more than 15 acres as hereinafter provided.

History: En. Sec. 2, Ch. 177, L. 1963; and Sec. 1, Ch. 337, L. 1974; R.C.M. 1947, 52-402.

71-1-303. Definitions. As used in this part, unless the context requires otherwise the following definitions apply:

- (1) "Beneficiary" means the person named or otherwise designated in a trust indenture as the person for whose benefit a trust indenture is given or his successor in interest, and who shall not be the trustee.
- (2) "Fifteen acres" means 15 acres of land.
- (3) "Grantor" means the person conveying real property by a trust indenture as security for the performance of an obligation.
- (4) "Trust indenture" means an indenture executed in conformity with this part and conveying real property to a trustee in trust to secure the performance of an obligation of the grantor or other person named in the indenture to a beneficiary.
- (5) "Trustee" means a person to whom the legal title to real property is conveyed by a trust indenture or his successor in interest.

History: En. Sec. 3, Ch. 177, L. 1963; and Sec. 2, Ch. 337, L. 1974; R.C.M. 1947, 52-403(part).

71-1-304. Trust indentures authorized — power of sale for breach in trustee. (1) Transfers in trust of any interest in real property of an area not exceeding 15 acres may be made to secure the performance of an obligation of a grantor or any other person named in the indenture to a beneficiary provided that it shall be unlawful to substitute a trust indenture for any mortgage in existence on March 5, 1963.

(2) Where any transfer in trust of any interest in real property is hereafter made to secure the performance of such an obligation, a power of sale is hereby conferred upon the trustee to be exercised after a breach of the obligation for which such transfer is security.

(3) A trust indenture executed in conformity with this part may be foreclosed by advertisement and sale in the manner hereinafter provided or, at the option of the beneficiary, by judicial procedure as provided by law for the foreclosure of mortgages on real property. The power of sale may be exercised by the trustee without express provision therefor in the trust indenture.

(4) Where the trust indenture states that the real property involved does not exceed 15 acres, such statement shall be binding upon all parties and conclusive as to compliance with the provisions of this part relative to the power to make a transfer, trust, and power of sale.

History: (1) En. Sec. 4, Ch. 177, L. 1963; and Sec. 3, Ch. 337, L. 1974; R.C.M. 1947, 52-404; (2) En. Sec. 3, Ch. 177, L. 1963; and Sec. 2, Ch. 337, L. 1974; R.C.M. 1947, 52-403(part), 52-404.

71-1-305. Trust indenture considered to be mortgage on real property. A trust indenture is deemed to be a mortgage on real property and is subject to all laws relating to mortgages on real property except to the extent that such laws are inconsistent with the provisions of this part, in which event the provisions of this part shall control. For the purpose of applying the mortgage laws, the grantor in a trust indenture is deemed the mortgagor and the beneficiary is deemed the mortgagee.

History: En. Sec. 17, Ch. 177, L. 1963; R.C.M. 1947, 52-417.

71-1-306. Qualifications of trustee — successor trustee. (1) The trustee of a trust indenture under this part shall be:

- (a) an attorney who is licensed to practice law in Montana;
 - (b) a bank, trust company, or savings and loan association authorized to do business in Montana under the laws of Montana or the United States; or
 - (c) a title insurance or abstract company authorized to do business in Montana under the laws of Montana.
- (2) The beneficiary may appoint a successor trustee at any time by filing for record, in the office of the clerk and recorder of each county in which the trust property or some part thereof is situated, a substitution of trustee. The substitution shall identify the trust indenture by stating the names of the original parties thereto and the date of recordation and the book and page where the same is recorded, shall state the name and mailing address of the new trustee, and shall be executed and acknowledged by all of the beneficiaries designated in the trust indenture or their successors in interest. From the time the substitution is filed for record, the new trustee shall be vested with all the power, duties, authority, and title of the trustee named in the trust indenture and of any successor trustee.

History: En. Sec. 5, Ch. 177, L. 1963; R.C.M. 1947, 52-405.

71-1-307. Reconveyance upon performance — liability for failure to reconvey. Upon performance of the obligation secured by the trust indenture, the trustee, upon written request of the beneficiary, shall reconvey the interest in real property described in the trust indenture to the grantor. In the event the obligation is performed and the beneficiary refuses to request reconveyance or the trustee refuses to reconvey the property, the beneficiary or trustee so refusing shall be liable as provided by law in the case of refusal to execute a discharge or satisfaction of a mortgage on real property.

History: En. Sec. 6, Ch. 177, L. 1963; R.C.M. 1947, 52-406.

71-1-308 through 71-1-310 reserved.

71-1-311. Time for foreclosure same as mortgage. The foreclosure of a trust indenture by advertisement and sale or by judicial procedure

shall be commenced within the time, including extensions, provided by law for the foreclosure of a mortgage on real property.

History: *En. Sec. 7, Ch. 177, L. 1943; R.C.M. 1947, 52-407.*

Cross-References

Period of mortgage — renewal, 71-1-210.

71-1-312. Discontinuance of foreclosure proceedings when entire amount of default paid. (1) Whenever all or a portion of any obligation secured by a trust indenture has, prior to the maturity date fixed in such obligation, become due or been declared due by reason of a breach or default in the performance of any obligation secured by the trust indenture, including a default in the payment of interest or of any installment of principal or by reason of failure of the grantor to pay, in accordance with the terms of such trust indenture, taxes, assessments, premiums for insurance, or advances made by the beneficiary in accordance with the terms of such obligation or of such trust indenture, the grantor or his successor in interest in the trust property or any part thereof or any other person having a subordinate lien or encumbrance of record thereon or any beneficiary under a subordinate trust indenture, at any time prior to the time fixed by the trustee for the trustee's sale if the power of sale is to be exercised, may pay to the beneficiary or his successor in interest the entire amount then due under the terms of such trust indenture and the obligation secured thereby (including costs and expenses actually incurred and reasonable trustee's and attorney's fees) other than such portion of the principal as would not then be due had no default occurred and thereby cure the default theretofore existing.

(2) Thereupon all proceedings theretofore had or instituted to foreclose the trust indenture shall be canceled and the obligation and the trust indenture shall be reinstated and shall be and remain in force and effect the same as if no such acceleration had occurred.

(3) If the default is cured and the obligation and the trust indenture reinstated in the manner hereinabove provided, the beneficiary or his assignee shall, on demand of any person having an interest in the trust property, execute, acknowledge, and deliver to him a request that the trustee execute, acknowledge, and deliver a cancellation of the recorded notice of sale under such trust indenture.

(4) Any beneficiary under a trust indenture or his assignee who, for a period of 30 days after such demand, refuses to request the trustee to execute, acknowledge, and deliver such cancellation shall be liable to the person entitled to such request for all damages resulting from such refusal.

(5) A cancellation of a recorded notice of sale shall, when executed and acknowledged, be entitled to be recorded and shall be sufficient if it sets forth a reference to the trust indenture and the book and page where the same is recorded, a reference to the notice of sale and to the book and page where the same is recorded, and a statement that such notice of sale is canceled.

History: *En. Sec. 12, Ch. 177, L. 1943; R.C.M. 1947, 52-412.*

71-1-313. Conditions for foreclosure by advertisement and sale. The trustee may foreclose a trust indenture by advertisement and sale under this part

(1) the trust indenture, any assignments of the trust indenture by the trustee or the beneficiary, and any appointment of a successor trustee are recorded in the office of the clerk and recorder of each county in which the property described in the trust indenture or some part thereof is situated;

(2) there is a default by the grantor or other person owing an obligation or by their successors in interest, the performance of which is secured by the trust indenture, with respect to any provision in the indenture which authorizes sale in the event of default of such provision; and

(3) the trustee or beneficiary shall have filed for record in the office of the clerk and recorder in each county where the property described in the indenture or some part thereof is situated a notice of sale, duly executed and acknowledged by such trustee or beneficiary, setting forth:

(a) the names of the grantor, trustee, and beneficiary in the trust indenture and the name of any successor trustee;

(b) a description of the property covered by the trust indenture;

(c) the book and page of the mortgage records where the trust indenture is recorded;

(d) the default for which the foreclosure is made;

(e) the sum owing on the obligation secured by the trust indenture;

(f) the trustee's or beneficiary's election to sell the property to satisfy the obligation;

(g) the date of sale, which shall not be less than 120 days subsequent to the date on which the notice of sale is filed for record, and the time of sale, which shall be between the hours of 9 a.m. and 4 p.m., mountain standard time;

(h) the place of sale which shall be at the courthouse of the county or one of the counties where the property is situated or at the location of the property or at the trustee's usual place of business if within the county or one of the counties where the property is situated.

History: *En. Sec. 4, Ch. 177, L. 1943; R.C.M. 1947, 52-408(1).*

71-1-314. Requests for copies of notice of sale. At any time subsequent to the recording of a trust indenture and prior to the recording of a notice of sale under the indenture, any person desiring a copy of any notice of sale under a trust indenture as provided in 71-1-315(1) may cause to be filed for record in the office of the county clerk and recorder of the county or counties in which any part or parcel of the real property is situated, a duly acknowledged request for a copy of any notice of sale, showing service upon the trustee. The request shall contain the name and address of the person requesting a copy of the notice and shall identify the trust indenture by stating the names of the parties to the indenture, the date of recording of the indenture, and the book and page where the indenture is recorded. The county clerk and recorder shall immediately make a cross-reference of the request to the trust indenture either on the margin of the page where the trust indenture is recorded or in some other suitable place. No request, statement, or notation placed on the record pursuant to this section shall affect title to the property or be deemed notice to any person that any person so recording the request has any right, title, interest in, lien, or charge upon the property referred to in the trust indenture.

History: *En. Sec. 15, Ch. 177, L. 1943; R.C.M. 1947, 52-415.*

71-1-315. Notice — sale — payment. A trust deed may be foreclosed by advertisement and sale in the manner hereinafter provided:

(1) The trustee shall give notice of the sale in the following manner:

(a) At least 120 days before the date fixed for the trustee's sale, a copy of the recorded notice of sale shall be mailed by registered or certified mail to:

(i) the grantor, at the grantor's address as set forth in the trust indenture or (in the event no address of the grantor is set forth in the trust indenture) at the grantor's last known address;

(ii) each person designated in the trust indenture to receive notice of sale whose address is set forth therein, at such address;

(iii) each person who has filed for record a request for a copy of notice of sale within the time and in the manner hereinafter provided, at the address of such person as set forth in such request;

(iv) any successor in interest to, the grantor whose interest and address appear of record at the filing date and time of the notice of sale, at such address;

(v) any person having a lien or interest subsequent to the interest of the trustee and whose lien or interest and address appear of record at the filing date and time of the notice of sale, at such address.

(b) At least 20 days before the date fixed for the trustee's sale, a copy of the recorded notice of sale shall be posted in some conspicuous place on the property to be sold. Upon request of the trustee, the notice of sale shall be posted by a sheriff or constable of the county wherein the property to be sold is located.

(c) A copy of the notice of sale shall be published in a newspaper of general circulation published in any county in which the property or some part thereof is situated, at least once each week for 3 successive weeks. If there is no such newspaper, then copies of the notice of sale shall be posted in at least three public places in each county in which the property or some part thereof is situated. The posting or the last publication shall be made at least 20 days before the date fixed for the trustee's sale.

(2) On or before the date of sale, there shall be recorded in the office of the clerk and recorder of each county where the property or some part thereof is situated, affidavits of mailing, posting, and publication showing compliance with the requirements of this section.

(3) On the date and at the time and place designated in the notice of sale, the trustee or his attorney shall sell the property at public auction to the highest bidder. The property may be sold in one parcel or in separate parcels, and any person, including the beneficiary under the trust indenture but excluding the trustee, may bid at the sale. The person making the sale may, for any cause he deems expedient, postpone the sale for a period not exceeding 15 days by public proclamation at the time and place fixed in the notice of sale. No other notice of the postponed sale need be given.

(4) The purchaser at the sale shall pay the price bid in cash, and upon receipt of payment, the trustee shall execute and deliver a trustee's deed to the purchaser. In the event the purchaser refuses to pay the purchase price, the person conducting the sale shall have the right to resell the property at any time to the highest bidder. The party refusing to pay shall be liable for

Any loss occasioned thereby, and the person making the sale may also, in his discretion, thereafter reject any other bid of such person.

History: Ap. P. Sec. 3, Ch. 177, L. 1963; Sec. 52-408, R.C.M. 1947; (1) thru (4) Ea. Sec. 9, Ch. 177, L. 1963; and, Sec. 1, Ch. 53, L. 1977; Sec. 52-409, R.C.M. 1947; R.C.M. 1947, 52-408(2), 52-409; and, Sec. 1, Ch. 55, L. 1983.

Compiler's Comments

1963 Amendment: In (2), substituted "recorded" for "filed for record".

71-1-316. Disposition of proceeds of sale. The trustee shall apply the proceeds of the trustee's sale as follows:

(1) to the costs and expenses of exercising the power of sale and of the sale, including reasonable trustee's fees and attorney's fees;

(2) to the obligation secured by the trust indenture;

(3) the surplus, if any, to the person or persons legally entitled thereto, for the trustee, in his discretion, may deposit such surplus with the clerk and recorder of the county in which the sale took place. Upon depositing such surplus, the trustee shall be discharged from all further responsibility therefor and the clerk and recorder shall deposit the same with the county treasurer subject to the order of the district court of such county.

History: Ea. Sec. 13, Ch. 177, L. 1963; R.C.M. 1947, 52-413.

71-1-317. Deficiency judgment not allowed. When a trust indenture executed in conformity with this part is foreclosed by advertisement and sale, no other or further action, suit, or proceedings shall be taken or judgment entered for any deficiency against the grantor or his surety, guarantor, or successor in interest, if any, on the note, bond, or other obligation secured by the trust indenture or against any other person obligated on such note, bond, or other obligation.

History: Ea. Sec. 14, Ch. 177, L. 1963; R.C.M. 1947, 52-414.

71-1-318. Trustee's deed. (1) The trustee's deed to the purchaser at the trustee's sale may contain, in addition to a description of the property conveyed, recitals of compliance with the requirements of this part relating to the exercise of the power of sale and the sale, including recitals of the facts concerning the default, the notice given, the conduct of the sale, and the receipt of the purchase money from the purchaser.

(2) When the trustee's deed is recorded in the deed records of the county or counties where the property described in the deed is situated, the recitals contained in the deed and in the affidavits required under 71-1-315(2) shall be prima facie evidence in any court of the truth of the matters set forth therein, except that the same shall be conclusive evidence in favor of subsequent bona fide purchasers and encumbrancers for value and without notice.

(3) The trustee's deed shall operate to convey to the purchaser, without right of redemption, the trustee's title and all right, title, interest, and claim of the grantor and his successors in interest and of all persons claiming by, through, or under them in and to the property sold, including all such right, title, interest, and claim in and to such property acquired by the grantor or his successors in interest subsequent to the execution of the trust indenture.

History: Ea. Sec. 10, Ch. 177, L. 1963; R.C.M. 1947, 52-410.

71-1-319. Possession. The purchaser at the trustee's sale shall be entitled to possession of the property on the 10th day following the sale, and any persons remaining in possession after that date under any interest, except one prior to the trust indenture, shall be deemed to be tenants at will.

History: En. Sec. 11, Ch. 177, L. 1943; R.C.M. 1947, 52-411.

71-1-320. Trustees' fees and attorneys' fees. Reasonable trustees' fees and attorneys' fees to be charged to the grantor in the event of foreclosure by advertisement and sale shall not exceed, in the aggregate, 5% of the amount due on the obligation, both principal and interest, at the time of the trustee's sale. If prior to the trustee's sale the obligations and the trust indenture shall be reinstated in accordance with provisions of 71-1-312, the reasonable trustees' fees and attorneys' fees to be charged to the grantor shall not exceed the lesser of \$1,000 or 1% of the amount due on the obligation, both principal and interest, at the time of default. In no event shall trustees' fees and attorneys' fees be charged to a grantor on account of any services rendered prior to the commencement of foreclosure.

History: En. Sec. 16, Ch. 177, L. 1943; R.C.M. 1947, 52-416; and, Sec. 2, Ch. 55, L. 1983.

Compiler's Comments

1983 Amendment: At end of part to last sentence, after "shall not exceed" substituted the rest of sentence referring to fees for "\$150".

71-1-321. Deeds of trust and trust deeds not invalidated. The Small Tract Financing Act of Montana does not invalidate or preclude the use in this state of instruments, sometimes denominated deeds of trust, trust deeds, or trust indentures, which are not executed in conformity with this part, but in which a conveyance for security purposes is made to a trustee or trustees for the benefit of one or more lenders. Such instruments are considered to be mortgages and are subject to all laws relating to mortgages on real property. Every such instrument, recorded as prescribed by law, from the time it is filed for record is constructive notice of its contents to subsequent purchasers and encumbrancers.

History: En. Sec. 1, Ch. 342, L. 1979.

CHAPTER 2

PLEDGES

Part 1 — Pledges in General

Section

71-2-101. Definitions.

71-2-102. When contract considered a pledge.

71-2-103. Delivery required.

71-2-104. Pledgee or pledge holder for reward.

71-2-105. Gratuitous pledge holder.

71-2-106. Obligations of pledge holder.

71-2-107. Property pledged to extent of lien.

71-2-108. When pledge may not be withdrawn.

71-2-109. When real owner cannot defeat pledge.

71-2-110. Debtor's misrepresentation of value of pledge.

SENATE BILL NO. 185
INTRODUCED BY SENATOR LES HIRSCH

Chairman and members of the committee, I am Julie Begler a Real Estate Loan Officer with NORwest Bank Helena and a member of the Montana Bankers Association Real Estate Committee. My testimony is on Senate Bill No. 185 which was introduced by Les Hirsch.

Senate Bill 185 is asking for an amendment to the allowable trustee and attorney fees on reinstatement of an obligation and Trust Indenture under the Small Tract Financing Act of Montana.

Currently the allowable fees are the lesser of \$1000.00 or 1% of both the Principal and Interest at the time of default. We are asking to amend this to read "reasonable and customary trustee and attorney fees.

I would like to give you an example of the typical foreclosure procedure.

1. The loan must be at least 90 days past due. The Trust Indenture stipulates that the loan must be 3 months or 90 days past due before any legal action can be taken.
2. A written notification must be given to the grantor (borrower) at least 30 days prior to the commencement of foreclosure.
3. From the date the 30 day notice expires the trustee must set a Public Trustee Sale date. The Small Tract Financing Act stipulates that this must be a least 120 days from the expiration of the 30 day notice.
4. Once the sale date is determined the trustee must perform the following duties:
 - A. Secure a title report to identify other lien holders.
 - B. Notify all other lien holders of the foreclosure action via certified mail.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 012985
BILL NO. SB 185

- C. Carefully review the payment record of the grantor(borrower) to ensure that the publication notices will be correct.
- D. Advertise the Public Trustee sale in a local newspaper at least once a week for 3 consecutive weeks.
- E. NOtify all grantors(borrowers) of their rights under the Small Tract Financing Act and notify them of the Sale date via certified mail.
- F. Research the possibility of delinquent taxes and special assessments.
- G. Ascertain that the property is covered by Hazard Insurance.
- H. At least 20 days prior to sale the Trustee must post a notice on the residence giving the date, time and place of sale.

All of these responsibilities require the trustee to be in constant contact with the lender which is very time consuming.

As you can see by the example by the time the Trustee Sale date comes to pass approximately 240 days or 8 months has elapsed. During which time the loan continues to be delinquent.

I would like to give you an actual example of a recent foreclosure action that ended in reinstatement.

The bank was within 20 days of the Public Trustee sale. All of the above duties had been completed, we were simply awaiting the sale date. At this point the grantor was 8 months past due on his loan. 20 days prior to the sale date the grantor cured the default. We had incurred attorney fees of approximately \$260.00, we were able to recoup only \$48.70 as the total unpaid principal and interest owing at the time of default was \$4870.00.

As all costs incurred in doing business are passed on to the consumer one way or another, sooner or later the consumer will be subsidizing the borrower.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

DATE 012985

Page 3

Senate Bill #185

who does ^{not} make his payments on time. We ask therefore that we be allowed to charge those individuals who do not make their payments.

I would also like to point out that the Trust INdenture is the primary security instrument used in the State of Montana. NOT only for residential Real Estate but also for large commercial ventures involving 15 acres or less. With this I would like to close and ask if there are any questions.

SENATE JUDICIARY COMMITTEE
BILL NO. 2
DATE 012985
BILL NO. SB185

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

NAME: Les Aike DATE: 1/29/85

ADDRESS: #1 Last Chance Gulch

PHONE: 442-4122

REPRESENTING WHOM? Mont. Bombses Ass'n

APPEARING ON WHICH PROPOSAL: SB 185

DO YOU: SUPPORT? X AMEND? OPPOSE?

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 3

DATE 012985

BILL NO. SB 185

DAVID L. NIELSEN
ATTORNEY AT LAW
402 2ND AVENUE SOUTH . P.O. Box 1187
GLASGOW, MONTANA 59230

406/228-2483

January 2, 1985

Representative Ted Schye
Capitol Station
Helena, Montana 59601

Dear Ted:

The purpose of this letter is to set forth the reason for the proposed amendment of M.C.A. Sec. 46-8-113, as is set forth in House Bill No. 109.

Presently paragraph (2) of 46-8-113 appears to be in conflict with M.C.A. Sec. 46-18-232. M.C.A. Sec. 46-8-113 at the present provides that when a defendant is appointed counsel by the court, then he cannot be made to pay as part of a sentencing those costs which would include expenses inherent in a constitutionally guaranteed jury trial. As a practical matter, the only costs inherent in a jury trial are the costs of jury service. M.C.A. Sec. 46-18-232 specifically allows for a court to require a convicted defendant to pay costs plus costs of jury service as part of his sentence. That section also sets forth the protection for the defendant that he may not be required to pay these costs unless the court makes a determination that he is able to pay the costs and is able to take into account the resources of the defendant and the nature of the burden that payment of these costs will impose. This test which the court is required to apply before ordering costs is the same test set forth in 46-8-113. Since the defendant under both sections is protected from having to pay costs if he is financially unable to do so, there seems to be no reason why a defendant who is sentenced when he has received court appointed counsel should be excused from the payment of costs of jury service as set forth in 46-18-232. At the present it seems that the indigent defendant who has the court appointed counsel who might have an ability to pay the costs in the future is given the benefit of not having to pay those costs for jury service whereas a defendant who has to hire his own attorney could be required to pay the jury costs. The defendant is adequately protected and in order to remove the

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 4

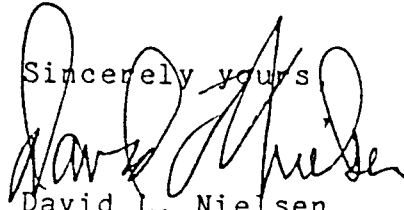
DATE: 012985

BILL NO. H8109

Representative Ted Schye
M.C.A. Sections 46-8-113(2)
and 46-18-232
January 2, 1985
Page 2

confusion it would be best that the amendment proposed in
House Bill No. 109 be approved so that the defendants are put
on equal footing.

Sincerely yours



David L. Nielsen
Valley County Attorney

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 4
DATE 012985
BILL NO. HB 109

dance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505,

45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118."

46-18-232. Payment of costs by defendant. (1) A court may require a convicted defendant in a felony or misdemeanor case to pay costs, as defined in 25-10-201, plus costs of jury service as a part of his sentence. Such costs shall be limited to expenses specifically incurred by the prosecution in connection with the proceedings against the defendant.

(2) The court may not sentence a defendant to pay costs unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take into account the financial resources of the defendant and the nature of the burden that payment of costs will impose.

(3) A defendant who has been sentenced to pay costs and who is not in default in the payment thereof may at any time petition the court that sentenced him for remission of the payment of costs or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or his immediate family, the court may remit all or part of the amount due in costs or modify the method of payment.

History: En. Sec. 2, Ch. 198, L. 1981.

Compiler's Comments

1981 Title: The title to Ch. 198, L. 1981 (SB 14), read: "An act providing for fines and assessment of costs in felony and misdemeanor criminal cases; allowing community service as a condition of deferred or suspended sentences; amending section 46-18-201, MCA."

Interim Study Committee Bill: Chapter 198, L. 1981 (SB 14), was introduced at the request of the interim Committee on Corrections Policy and Facility Needs. See committee report, Legislative Council, 1980.

46-18-233. Fine or costs as a condition on suspended or deferred sentence. (1) Whenever a defendant is sentenced to pay a fine or costs under 46-18-231 or 46-18-232 and the imposition or execution of the rest of his sentence is deferred or suspended, the court may make payment of the fine or costs a condition for probation.

(2) A suspended or deferred sentence may not be revoked if the defendant defaults on the payment of the fine and the default is not attributable to an intentional refusal to obey the order of the court or a failure to make a good faith effort to make the payment.

History: En. Sec. 3, Ch. 198, L. 1981.

46-18-234. When payment of fine or costs due. Whenever a defendant is sentenced to pay a fine or costs under 46-18-231 or 46-18-232, the court may grant permission for payment to be made within a specified period of time or in specified installments. If no such permission is included in the sentence, the payment is due immediately.

History: En. Sec. 4, Ch. 198, L. 1981.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 4

DATE 012985

BILL NO. HB 109

AMENDMENTS TO SB 54:

1. Title, line 5.

Following: "A"

Strike: "FELONY"

Insert: "MISDEMEANOR"

2. Page 1, line 18.

Following: "the"

Strike: "unethical"

Insert: "unreasonable"

3. Page 1, line 20.

Following: "another"

Insert: "by means of duress, menace, fraud, or undue influence"

4. Page 2, line 22.

Following: line 21

Strike: "felony offense"

Insert: "misdemeanor"

5. Page 2, line 23.

Following: "exceed"

Strike: "\$50,000"

Insert: "\$500"

Following: "in the"

Strike: "state"

6. Page 2, line 24.

Following: line 23

Strike: "prison"

Insert: "county jail"

Following: "exceed"

Strike: "5 years"

Insert: "6 months"

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 5

DATE 012985

BILL NO. SB 54

(Type in committee name, secretary and chairman. Have at least 50 printed to start.)

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 012985 Senate Bill No. 54 Time 11:18

NAME	YES	NO
Senator Chet Blaylock		X
Senator Bob Brown	X	
Senator Bruce D. Crippen		X
Senator Jack Galt	X	
Senator R. J. "Dick" Pinsoneault		X
Senator James Shaw	X	
Senator Thomas E. Towe		X
Senator William P. Yellowtail, Jr.		X
Vice Chairman	X	
Senator M. K. "Kermit" Daniels		
Chairman	X	
Senator Joe Mazurek		

Cindy Staley
Secretary

Mazurek
Chairman

Motion: Amend p. 2 line 21 be amended
by striking "experts"

(include enough information on motion—put with yellow copy of committee report.)

Failed

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 6

DATE 012985

BILL NO. SB 54

Montana Trial Lawyers ASSOCIATION

Directors:

Richard W. Anderson
Milton Datsopoulos
Bernard J. Everett
Donald W. Molloy
Terry J. Hanson
Tom L. Lewis
William L. Madden, Jr.
Peter M. Meloy
James D. Moore
Sharon M. Morrison
W. D. Murray, Jr.
William A. Rossbach
Terry N. Triewiler
Douglas J. Wold

Executive Office
#1 Last Chance Gulch
Helena, Montana 59601
Tel: 443-3124

Officers:

Terry N. Triewiler
President
Sharon M. Morrison
President-Elect
Tom L. Lewis
Vice-President
William A. Rossbach
Secretary-Treasurer
Governor:
Wade J. Dahood
Executive Director:
Carol Harrison

PROPOSED AMENDMENT TO S.B. 110 -- UNIFORM ARBITRATION ACT

Delete: Page 1, line 25 after the word "agreement." to page 2,
line 5. (All of the text of Section 4)

Add: Page 1, line 25 after the word "agreement." the following:

"(1) A written agreement to submit an existing controversy to
arbitration is valid and enforceable except upon such grounds as
exist at law or in equity for the revocation of a contract.

(2) A written agreement to submit to arbitration any controversy
arising between the parties after the contract is made is valid
and enforceable except upon such grounds as exist at law or in
equity for the revocation of a contract. [Section 4 (2)] shall
not apply to:

(a) Claims arising out of personal injury, based
on contract or tort;

(b) Any agreement concerning or relating to insurance
policies or annuity contracts except for those contracts
between insurance companies;

(c) Any agreement which has not been concluded upon the
advice of counsel to all parties as evidenced by counsel's
signature thereto;

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 7

DATE 012985

FILE NO. SB 110

A/N
B/T
V/D
B/C
E/P
S/M

(d) Claims for worker's compensation; and,

(e) Arbitration agreements between employers and employees or their respective representatives unless the agreement provides that [Section 4 (2)] shall apply.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 7
DATE 012985
BILL NO. SB 110

PROPOSED AMENDMENTS TO S.B. 110

Submitted by Blue Cross and Blue Shield

1. Page 1, line 25:

Following: "agreement"
Insert: "--exceptions"

2. Page 2, line 25:

Following: "."
Insert: "(1) Except as provided in subsection (2),

3. Page 2, line 3:

Following: "valid"
Delete: ", "
Insert: "and"

4. Page 2, line 3:

Following: "enforceable"
Delete: ", and irrevocable"

5. Page 2, line 5:

Following: "contract."
Insert: "(2) Except as provided in subsection (3),
a written agreement to submit to
arbitration any controversy arising between
the parties after the contract is made is
not valid and enforceable in the following
instances:

(a) Claims arising out of personal injury,
based on contract or tort;

(b) Any agreement concerning or relating
to insurance policies or annuity contracts
except for those contracts between
insurance companies;

(c) Any agreement which has not been
concluded upon the advise of counsel to all
parties as evidenced by counsel's signature
thereto;

(d) Claims for worker's compensation; and

(e) Arbitration agreements between
employers and employees or their respective
representatives unless the agreement
provides that subsection (1) shall apply.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 8

C 012985

B NO. SB 110

(3) The prohibitions and requirements of subsection (2) do not apply to or affect the validity of arbitration agreements under a membership contract as defined in Section 33-30-101(3) and subject to regulation under Title 33, Chapter 30.

6. Page 11, following line 15:

Insert: "No agreement concerning venue involving a resident of this state is valid unless the agreement requires that arbitration occur within the state of Montana. This requirement may only be waived upon the advise of counsel as evidenced by counsel's signature thereto."

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 8

DATE 01/29/85

BILL NO. SB 110

(Type in committee name, secretary and chairman. Have at least 50 printed to start.)

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 012985 Senate Bill No. 110 Time 11:48

NAME	YES	NO
Senator Chet Blaylock	X	
Senator Bob Brown		X
Senator Bruce D. Crippen		X
Senator Jack Galt		X
Senator R. J. "Dick" Pinsoneault		X
Senator James Shaw		X
Senator Thomas E. Towe	X	
Senator William P. Yellowtail, Jr.	X	
Vice Chairman		
Senator M. K. "Kermit" Daniels	X	
Chairman		
Senator Joe Mazurek		X

Cindy Staley
Secretary

Mazurek
Chairman

Motion: Adopt Trial Lawyers amendment

(include enough information on motion—put with yellow copy of committee report.)

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 9
DATE 012985
BILL NO. SB 110

Failed

PROPOSED AMENDMENTS TO SB 104:

1. Page 1, line 10.
Following: "of"
Strike: "clerk"
Insert: "jury commissioner"
2. Page 5, line 22.
Following: "the"
Strike: "clerk"
Insert: "jury commissioner"
3. Page 6, line 1.
Following: "that the"
Strike: "clerk"
Insert: "jury commissioner"
4. Page 6, line 3.
Following: "draw. The"
Strike: "clerk"
Insert: "jury commissioner"

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 10
DATE 012985
BILL NO. SB 104

STANDING COMMITTEE REPORT

Page 1 of 2

January 29 19 35

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration SENATE BILL No. 54

second reading copy (yellow)
color

FELONY TO ABUSE, NEGLECT, OR EXPLOIT A PERSON 60 OR MORE YEARS OLD.

Respectfully report as follows: That SENATE BILL No. 54

be amended as follows:

1. Title, line 5.

Following: "A"

Strike: "FELONY"

Insert: "MISDEMEANOR"

2. Page 1, line 18.

Following: "the"

Strike: "unethical"

Insert: "unreasonable"

3. Page 1, line 20.

Following: "another"

Insert: "by means of duress, menace, fraud, or undue influence"

4. Page 2, line 9.

Following: "age"

Insert: "and unable because of physical or mental condition to adequately protect himself or his property"

~~XXXXXX~~

~~XXXXXXXXXX~~

CONTINUED

Chairman.

Page 2 of 2

SENATE BILL NO. 54

5. Page 2, line 22.
Following: line 21
Strike: "felony offense"
Insert: "misdemeanor"

6. Page 2, line 23.
Following: "exceed"
Strike: "\$50,000"
Insert: "\$500"
Following: "in the"
Strike: "state"

7. Page 2, line 24.
Following: line 23
Strike: "prison"
Insert: "county jail"
Following: "exceed"
Strike: "5 years"
Insert: "6 months"

AND AS AMENDED

DO PASS

Senator Joe Mazurek

STANDING COMMITTEE REPORT

January 29

19 85

MR. PRESIDENT

JUDICIARY

We, your committee on

SENATE BILL

No. 104

having had under consideration

first

reading copy (white)
color

COMPUTERIZED JURY SELECTION.

SENATE BILL

No. 104

Respectfully report as follows: That

be amended as follows:

1. Page 1, line 10.

Following: "of"

Strike: "clerk"

Insert: "jury commissioner"

2. Page 5, line 22.

Following: "the"

Strike: "clerk"

Insert: "jury commissioner"

3. Page 6, line 1.

Following: "that the"

Strike: "clerk"

Insert: "jury commissioner"

4. Page 6, line 3.

Following: "draw. The"

Strike: "clerk"

Insert: "jury commissioner"

AND AS AMENDED

DO PASS

~~XXXXXXXXXX~~

Senator Joe Mazurek

Chairman.

STANDING COMMITTEE REPORT

January 29 19 85

MR. PRESIDENT

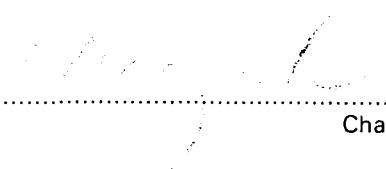
We, your committee on JUDICIARY
having had under consideration SENATE BILL No. 235
first reading copy (white)
color

PROFESSIONAL PERSON MAY EXAMINE PROTECTED PERSON BEFORE CONSERVATOR APPTMT.

Respectfully report as follows: That SENATE BILL No. 235

DO PASS

~~DO NOT PASS~~


Chairman.