

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

February 6, 1985

The twenty-second meeting of the Senate Judiciary Committee was called to order at 10:06 a.m. on February 6, 1985, by Chairman Joe Mazurek in Room 325 of the Capitol Building.

ROLL CALL: All committee members were present, with the exception of Senator Blaylock who was excused.

CONSIDERATION OF SB 186: Senator Matt Hims1, principal sponsor of the bill, testified SB 186 sets up a commission for sentencing guidelines and provides for termination of the commission in two years. The intent of the bill is to address the problem that has evolved concerning incarceration in all of our institutions. The bill stems from real community concern with the lack of uniformity in this system and also because of the cost. In 1984, we had 1,010 people in our institutions and 2,564 on parole and probation. This cost us \$21,931,308 in 1984. They have 803 in there now and the place wasn't built for that number. Something must be done, and we should address this whole problem. They propose to set up a commission which they can sunset in two years to study this problem and come up with some guidelines. Senator Hims1 distributed to the committee a copy of the Minnesota sentencing guidelines (Exhibit 1). He is asking that those people who are working in the corrective community would be the ones to serve on the commission. He doesn't feel the legislature should set sentencing guidelines, because it does not have the capability to form these type of judgments. This idea is not new. There has been some movement in this state through the past for a voluntary committee. This bill follows that up and puts this commission into statute so we will have something done in two years. The bill provides the commission can receive gifts or grants from people interested in funding it. The fiscal note shows it will cost about \$17,000 to fund. The legislature designates the crimes and sets the maximum and minimum, so he feels it has the authority to set the limits within the limits; and to do and to do that, they need the experience of the people within the corrective community. One of the interesting things in Minnesota is they did away with parole. They have directed themselves to shorten sentences and not have parole. He would hope that through the efforts of this type of commission, we might have the same performance. We should have someone take an objective view of our problem.

PROPOSERS: Frank Morrison, Supreme Court Justice, stated he appeared neither in support nor in opposition to the bill, but instead wanted to let the committee know what the judiciary has done in adopting sentencing guidelines. In 1982, Justice Haswell asked him to chair a commission on guidelines. They came to the legislature in 1982 for \$8,000 for one-half a person to do research and were denied. Following that, he attempted to develop guidelines but found it was very difficult without staff. In 1983, he developed sentencing guidelines without input from the district judges. They were by and large sentences that put down on paper certain criteria relating to the history of the offender and the seriousness of the offense. These were put on paper so they could get input from the judges in Montana. In 1984 he went to the judicial conference and asked if they wanted to continue with the effort by implementing a pilot program. They voted to do that this last November. That project is now in effect. He asked if he should go to oppose or support the bill, and they said to come and support the effort. If this effort is to be undertaken in a scientific way, they need some staff. If the bill is approved, the supreme court should abandon its commission. Justice Morrison referred to page 1, lines 21-22, of the bill. He commented the Montana constitution provides sentences must be based either on reformation or deterrence. He is not sure you can punish people and feels the language indicated should be eliminated. He then referred to page 5, lines 11-15, of the bill. He disagrees with that from a philosophical standpoint. The correct sentence should be imposed even if we have to build more prisons to accommodate them. This should not be geared to the correctional facility per se. The guidelines are not bad just because the prison is full. He would rather see a permanent commission rather than one that terminates in 1987. It should be ongoing and continuously revise the guidelines. Justice Morrison then referred to page 4, line 2, of the bill, and stated he would prefer to limit the guidelines to the district courts and not get into the area of justice courts. It is a very ambitious undertaking to develop guidelines for misdemeanors in justice courts. There is a great deal of disparity because of the difference in judges, but he feels they will welcome the guidelines. Sentence review is performing the function of sentencing guidelines. Sentence review is doing the same thing the district judge is doing without having the feel for the defendant. He would rather see some good tools in the hands of the district judges than have sentence review. Pat Melby, representing the State Bar of Montana, testified this is the second opportunity he has had to testify in favor of SB 186. Last Friday, Senator Brown's SB 150 was heard which would have eliminated the sentence review board. Mr. Melby felt it was premature to look at sentence review until there is something to replace it. A sentence based on guidelines would help alleviate the problems of disparity. The effort Justice Morrison has made on a voluntary basis without staff support would dovetail nicely with what Senator Himsel has

done here. The State Bar supported the creation of a sentencing guidelines commission.

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: Senator Crippen addressed Justice Morrison and stated he liked the bill very much, as it will not interfere with the discretion the district judges will have. He asked Justice Morrison if he felt the sentence review board should be eliminated. Justice Morrison responded he would make changes in the sentence review board and have it work with sentencing guidelines. He felt that if the sentence fell within the guidelines, neither party should be entitled to review. If the sentence fell outside the guidelines, the district judge should have to say why, and then either party should be entitled to sentence review. He believes the supreme court is busy enough the way it is without having to do sentence review, which is what it would have to do if the sentence review board were eliminated. The way it is now, the county attorney cannot get sentence review, only the defendant can. He feels either should be able to. Senator Crippen pointed out there was some conflicting testimony that neither the prosecuting attorney nor the sentencing district court judge had the right to appear before the sentence review board and present his case. They could come only at the request of the defendant or his counsel. He asked if they should have that right. Justice Morrison responded they should. Senator Daniels addressed Justice Morrison and stated the committee has been hearing all of the time that the state doesn't have a right of appeal. He asked what the rationale was that a county attorney should follow up on sentences. He asked if that shouldn't be the end of it and from then on it should be a matter for the judiciary. Justice Morrison replied the county attorney should have the right to say this sentence is outside the guidelines and society has the right to be protected. He agreed with respect to appeal as to whether the person is guilty or not, but he thinks the sentence is another matter. Senator Mazurek questioned whether Justice Morrison were satisfied that the committee could do a better job than what he was doing. Justice Morrison replied if the legislature sets up this commission, they will give it all of what they have done. He doesn't think we should have two of them functioning side by side. If the bill is passed, he will suggest to the commission that we not have two going on which parallel each other. Senator Mazurek asked Senator Himsel if he would object to that. Senator Himsel pointed out that page 2 of the bill provides that in all likelihood Justice Morrison will serve on this commission. Senator Crippen commented he had a tendency to agree that he was concerned whether the prosecutor should have the right to appeal the sentence, but he likes the idea that he would be able to if it fell outside the guidelines. Senator Pinsoneault commented he has a right to appeal, but he doesn't have to. He can if he wants to, and he should have that option.

CLOSING STATEMENT: Senator Himsl hoped it was not construed that he is qualified or he is here to criticize the justice system. The public's perception of the justice system is suspect, and this is no giant step in that direction, but it is an effort to respond to what is a public concern. There has to be a better way of doing it and this is a step to finding out what that is. A number of other states are doing it, and we should look at the same thing.

Hearing on SB 186 was closed.

CONSIDERATION OF HOUSE BILL 106: Representative Mary Ellen Connelly, sponsor of HB 106, testified what this bill does is submit to the people of Montana, to be voted on, a constitutional amendment to prohibit retired and defeated district judges from serving. The supreme court interpreted the phrase "other judges" to include retired judges and defeated judges. The people felt this was frustrating their right to vote and have a judge they selected. Representative Connelly also indicated Representative Gary Spaeth is in support of this bill, although he was unable to attend the hearing.

PROPOSERS: None.

OPPOSERS: None.

QUESTIONS FROM THE COMMITTEE: Senator Crippen stated he has some concerns with this bill, although he can understand where the people of the judicial district might object to a former district judge's coming back and sitting in that district. The defeat does not mean he is incompetent; he may just be a lousy politician. He feels we need some of their expertise, but so as not to offend some people in the district, maybe we should put them in another area. He asked if Representative Connelly objected to that type of proposal. Representative Connelly responded she did not personally, but the fact he was defeated meant the people didn't want him. Senator Crippen replied he understood that, but it is the chief justice who assigns them, and he believes he would use his discretion. Maybe we should give him guidelines in legislation. Senator Crippen commented he is not persuaded that just because a person has been defeated makes him a poor judge. Senator Pinsoneault asked if what recently happened in her district were a quirk with a lot of personality involved. Representative Connelly responded no; she did not think it was personality. Senator Pinsoneault asked if it were the feeling of her constituency that the judge is incompetent. Representative Connelly replied yes. Senator Towe stated everyone is assuming the reason the incumbent judge loses is because he is not doing his job properly; no one assumes the challenger is just liked better. Representative Connelly responded that could happen, but if he has been defeated,

he is not a judge. She does not think people intend to have the pool of judges decide their cases. Senator Brown requested that a lawyer on the Judiciary Committee explain the idea that when someone retires as a judge, he could act as a substitute judge, but when he is defeated, it is almost as though he becomes an un-judge. He asked how when someone loses an election as a judge he continues to be a judge. Senator Towe explained the law says that any retired judge or judge who has been on the bench for eight years is available in the pool to be called in. The assumption underlying the statute is anyone who served for eight years has had experience as a judge and doesn't need to be retrained. Senator Mazurek pointed out the threshold put in last session is the person would have been elected twice or have one appointment and one election before he would be eligible for retirement. Senator Brown asked if a judge had met this requirement and then he were removed, would there be any question he couldn't preside as a judge or would the law permit him to preside as a substitute judge. Senator Towe responded the law allowed someone who had been defeated to serve but someone who had been removed could not serve. The statute does not cover the question Senator Brown raises, and that is a more appropriate question to be raised.

Chairman Mazurek then allowed Representative Gary Spaeth to testify as a proponent to the bill, as Representative Spaeth had been unable to attend the hearing earlier when proponents were called for.

TESTIMONY FROM PROPONENT: Representative Spaeth stated he thinks this bill deals with the reality of how we pick and choose judges. He is not a supporter of electing judges. Although, because we do elect and choose judges through an electoral process, whether the person is good or bad, the decisions of the voters should be respected. When the voters have chosen a particular person, then that decision should be respected. He urged the committee to support this particular constitutional amendment.

CONTINUATION OF QUESTIONS FROM THE COMMITTEE: Senator Towe asked Representative Spaeth to respond to the point that if in fact an incumbent judge has served for eight years and a very popular attorney runs against him, so the focus of attention is not the incumbent judge's lack of confidence but on the challenger's good qualities, why shouldn't that judge be qualified and able to act as a sitting judge on a temporary emergency basis. Representative Spaeth replied it should not be presupposed as to the reasons of the electorate as to why they chose one person over another, but the emphasis should be that they chose. Two people might have different opinions as to why a person was or was not elected. The reality is, the voters made the decision, and we should abide by that decision. Senator Crippen asked how many favorable votes

this bill received in the House. Representative Spaeth replied 82. Senator Daniels commented he is aware the chief justice knows what the voters feel and this situation will probably not occur again. He does not think it needs a constitutional amendment to accomplish this purpose. Senator Mazurek addressed Representative Connelly and asked if this were a reaction to the judge's being recalled in one or two instances or if the judge were being called back regularly. Representative Connelly replied he was called back to hear about six cases.

CLOSING STATEMENT: Representative Spaeth stated we have to remember this goes to the vote of the people. It is not just her personal opinion; it is something the people wanted. It does seem the supreme court sometimes oversteps its authority. She feels the will of the people is being frustrated here.

Hearing on HB 106 was closed.

FURTHER CONSIDERATION OF SJR 7: Chairman Mazurek stated majority and minority reports had been prepared for SJR 7 pursuant to the request of the committee, but there has been concern from Senators Stephens and VanValkenburg about this. They would prefer the committee just send the resolution out on an adverse committee report and Senator Shaw make a motion to reconsider it to avoid two floor debates. He explained that it was Senator Shaw's and the committee's choice. There being no objection to doing this, Chairman Mazurek signed an adverse committee report which had been prepared for SJR 7.

FURTHER CONSIDERATION OF SB 55: Senator Towe stated he is satisfied Vic Cook has a reason for his distinction, but he does not believe it is very much of one. He would like the bill redrafted so it will not take away any of his rights. Senator Mazurek pointed out Mr. Cook is representing individual landowners who have received tax title, and Judge Coate is representing counties. Senator Towe stated it is still confusing, and he hasn't had the time he would like to spend on it. Chairman Mazurek agreed the committee would not take any action on it until Senator Towe has had an opportunity to review the bill further.

ACTION ON SB 185 WHICH WAS REREFERRED TO THE COMMITTEE: Senator Mazurek stated he thinks the concern was that we had gone away from a minimum amount on a small foreclosure and we left in the maximum. He stated 3% is not enough in a small action, but is too much in a big one. We need a floor and a ceiling. Senator Towe stated he would have no problem with putting the \$1,000 back in. On small tract financing, there should be no reason to go over \$1,000 in the foreclosure procedure unless there is some unusual procedure. The only other thing we could do is allow for approval by the court for unusual fees, although there

is no court action filed in these types of foreclosures. Senator Pinsoneault asked whether Senator VanValkenburg's question was whether the percentage was based on the total amount of the note or simply on what is due. Senator Mazurek stated it is based upon the total amount of the note, because once the payment is not made, notice is given for default, and it must be corrected within 30 days. Once the action starts, the total amount is claimed. Senator Pinsoneault asked if it is reinstated, the amount still remains as the total. or if it goes to default, it remains the same. Senator Mazurek replied no. If it goes to sale, we are governed by the earlier part of the statute which we are not amending which is 5%. Senator Blaylock pointed out this bill is trying to get a reasonable amount of money to the attorney and the bank for their work. Senator Mazurek pointed out you are going through all of the preparation to sell the property, and the bank may be charged more than it can recover. Senator Daniels suggested providing the total fees shall not be less than \$350 or \$2,500. Senator Towe replied he likes that approach but wondered if the figures were right. He felt \$1,000-1,500 would be better. Senator Galt asked how this would apply to a huge supermarket on seven acres of ground. Senator Towe suggested the figures be \$250 to \$1,500. Senator Shaw stated he has some reservations about this bill; it is a bill for the banks; he doesn't believe we need it. Senator Galt moved SB 185 be recommended DO PASS as is. Senator Towe moved as a substitute motion to amend SB 185 as follows:

Page 1, line 24.

Following: "EXCEED"

Insert: "the lesser of \$1,500 or"

Senator Yellowtail stated he liked the way Senator Towe has proposed this. Senator Towe stated he thinks the real concern is where you have a \$10,000 foreclosure and you apply the 10%, giving you only \$100. This amendment would at least remedy that situation. Senator Mazurek pointed out this helps the bank on the little foreclosure, and that is where they get burned. The motion to amend carried unanimously. Senator Brown moved as a substitute motion SB 185 be recommended DO PASS AS AMENDED. The motion carried unanimously.

FURTHER CONSIDERATION OF SB 110: Chairman Mazurek stated the Montana Trial Lawyers Association has been working with Steve Brown on behalf of Blue Cross and John Alke on behalf of Montana Physicians Service. The amendments on Exhibit 2 are the result of those discussions. The group health providers would like to be able to arbitrate the issue of medical necessity. Amendment No. 7 would allow arbitration to occur in Montana. Steve Brown stated this is broader than medical necessity. Senator Tow asked if he would accept limiting it to that. Mr. Brown responded what they want is medical necessity and pre-existing condition, although their amendment is broader than that. Senator Towe stated he had some

problems about the scope of coverage. Mr. Petesch explained all of these exceptions as to when it is not covered only apply to a pre-existing agreement to arbitrate. It's up to the parties to agree to arbitrate if something comes up later. Senator Mazurek suggested adding a subsection (4) as follows:

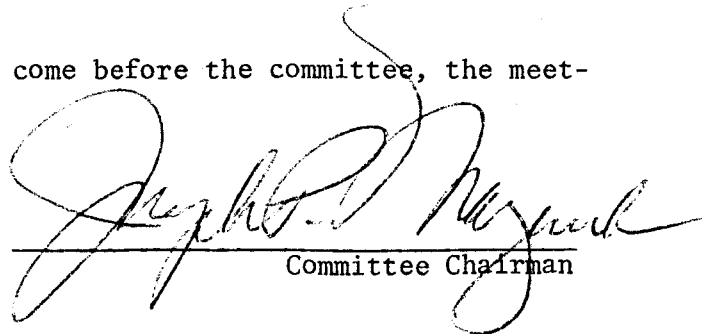
"(4) Notice that a contract is subject to arbitration pursuant to [this act] shall be typed in underlined capital letters on the first page of the contract; and unless such notice is displayed thereon, the contract may not be subject to arbitration."

TABLING OF SB 63: Senator Blaylock moved SB 63 be TABLED. The motion carried unanimously.

ACTION ON SB 110: Senator Pinsoneault moved the adoption of the amendments submitted, along with Senator Mazurek's suggested subsection (4). The motion carried unanimously. Senator Pinsoneault moved SB 110 be recommended DO PASS AS AMENDED. The motion carried with Senator Daniels voting in opposition.

ACTION ON SB 240: Proposed amendments to SB 240 were distributed to the committee (Exhibit 3). Senator Shaw moved SB 240 be recommended DO NOT PASS. Senator Towe pointed out the proposed amendments attempt to save the bill. He thinks it gives advantage to the defense and to the prosecution because it works both ways. Senator Shaw stated we are trying to inject something into our criminal justice system that is no good. Mr. Petesch stated because the rules of evidence were promulgated and the legislature did not change them within two sessions, this bill probably doesn't do anything. Senator Pinsoneault stated if it is not going to be used in a probationary hearing, it should be killed. The motion carried with Senators Brown, Mazurek, Towe, and Yellowtail voting in opposition.

There being no further business to come before the committee, the meeting was adjourned.


Committee Chairman

Presumptive Sentence Lengths in Months

| SEVERITY LEVELS OF CONVICTION OFFENSE | CRIMINAL HISTORY SCORE | | | | | | |
|--|------------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| | 0 | 1 | 2 | 3 | 4 | 5 | 6 or more |
| I Unauthorized Use of Motor Vehicle; Possession of Marijuana | 12* | 12* | 12* | 15 | 18 | 21 | 24 23-25 |
| II Theft-Related Crimes (\$150-\$2500); Sale of Marijuana | 12* | 12* | 14 | 17 | 20 | 23 | 27 25-29 |
| III Theft Crimes (\$150-\$2500) | 12* | 13 | 16 | 19 | 22 21-23 | 27 25-29 | 32 30-34 |
| IV Burglary-Felony Intent Receiving Stolen Goods (\$150-\$2500) | 12* | 15 | 18 | 21 | 25 24-26 | 32 30-34 | 41 37-45 |
| V Simple Robbery | 18 | 23 | 27 25-31 | 30 28-40 | 38 35-49 | 45 40-58 | 54 48-70 |
| VI Assault, 2nd Degree | 21 | 26 | 30 28-35 | 34 32-46 | 44 40-58 | 54 50-70 | 65 60-80 |
| VII Aggravated Robbery | 24 23-25 | 32 30-34 | 41 38-44 | 49 45-53 | 65 60-70 | 81 75-87 | 97 90-104 |
| VIII Assault, 1st Degree, Criminal Sexual Conduct, 1st Degree | 43 41-45 | 54 50-58 | 65 60-70 | 76 71-81 | 95 89-101 | 113 106-120 | 132 124-140 |
| IX Murder, 3rd Degree | 97 94-100 | 119 116-122 | 127 124-130 | 149 143-155 | 176 168-184 | 205 195-215 | 230 218-242 |
| X Murder, 2nd Degree | 116 111-121 | 140 133-147 | 162 153-171 | 203 192-214 | 243 231-255 | 284 270-298 | 324 309-339 |

Bold face numbers denote the range within which a judge may sentence without the sentence being deemed a departure.

1st Degree Murder is excluded from the guidelines by law and continues to have a mandatory life sentence.
*one year and one day.

be exercised—essentially by the courts within the constraints of the sentencing guidelines, with parole eliminated. Issues that were transferred to the Commission for resolution, subject to legislative review, included the relative weight to accord past sentencing practices and current correctional resources, the primary purpose of sentencing, and the extent to which uniformity in sentencing is desirable.

The Minnesota Sentencing Guidelines Commission determined that sanctions should be based on the seriousness of the offense of conviction and the offender's prior criminal history. The presumptive sentences embodied in the sentencing guidelines are summarized here in the accompanying two-dimensional grid. The vertical dimension of the

grid indicates the level of severity for the convicted offense. The offenses listed in each category are the most frequently occurring offense(s) at each severity level. A measure of an offender's criminal history is provided with the horizontal dimension of the grid. The shading across the grid is the dispositional line—all cases that fall in cells below the dispositional line receive presumptive imprisonment sentences, and cases that fall in cells above the dispositional line receive presumptive nonimprisonment, unless a mandatory minimum sentence applies. The single number at the top of each cell is the presumptive duration of the sentence, in months, that should be stayed or executed. Any sentence within the ranges shown in cells below the dispositional line

can be imposed without deeming the sentence a departure from the sentencing guidelines.

The Commission was instructed to submit sentencing guidelines to the legislature in January 1980 for review. The legislature did not reject them and they went into effect for crimes committed on or after May 1, 1980.

Prescriptive Approach in Guidelines Development

The most common approach to the development of sentencing guidelines is a descriptive approach. Guidelines construction is viewed primarily as a technical matter with the principal task to calculate equations that best capture current sentencing decisions. The solutions that

continued

PROPOSED AMENDMENTS TO SB 110:

SENATE JUDICIARY COMMITTEE

LEGISLATIVE NO. 2

DATE 020685

BILL NO. SB 110

1. Title, line 6.
Following: "TO"
Strike: "LABOR"
Insert: "CERTAIN"

2. Page 1, line 25.
Following: "agreement"
Insert: "--exceptions"
Following: "agreement."
Insert: "(1)"

3. Page 2, line 1.
Following: "arbitration"
Strike: remainder of line 1 through "made" on line 3

4. Page 2, line 3.
Following: "valid"
Strike: ", "
Insert: "and"

5. Page 2, line 4.
Following: "enforceable"
Strike: ", and irrevocable"

6. Page 2, line 6.
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 valid and enforceable except upon such grounds as exist at law or in equity for the revocation of a contract. This subsection does 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 advise of counsel to all parties as evidenced by counsel's signature thereto;

(d) claims for workers' compensation; and

(e) arbitration agreements between employers and employees or their respective representatives unless the agreement provides that (this act) applies.

(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 33-30-101(3) and ~~subject to regulation under Title 33, chapter 30.~~

(4) *to clarify language*

concerning medical necessity of whether the injury or illness is a preexisting condition

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

DATE 020685

BILL NO. SB 110

7. Page 11, line 15.
Following: "directs."

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 advice of counsel as evidenced by counsel's signature thereto."

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 3

DATE 020685

BILL NO. SB 240

PROPOSED AMENDMENTS TO SB 240:

1. Title, lines 6 through 8.

Following: "STIPULATE"

Strike: remainder of line 6 through "PROBATION;" on line 8

Insert: "PROVIDING THAT A POLYGRAPH MAY NOT BE GIVEN WITHOUT CONSENT;
PROHIBITING COMMENT ON THE EXISTENCE OF AN EXAMINATION OR REFUSAL
TO TAKE AN EXAMINATION;"

2. Page 1, line 13.

Following: "line 12

Insert: "(1)"

3. Page 1, line 15.

Following: "except"

Strike: ":",

4. Page 1, line 16.

Strike: "(1)"

5. Page 1, line 17.

Following: "record"

Strike: remainder of line 17 through line 19 in their entirety

Insert: ". Only those portions of the examination or results stipulated
to are admissible, pursuant to any conditions imposed by the parties
in the stipulation.

(2) No person may be required to submit to a polygraph examination without his consent.

(3) Nothing in this section may be construed to permit any comment on a person's refusal to take a polygraph examination or the existence of an examination unless such comment is one of the conditions stipulated to pursuant to subsection (1)."

STANDING COMMITTEE REPORT

Page 1 of 2

February 6

1985

MR. PRESIDENT

We, your committee on **JUDICIARY**

having had under consideration **SENATE BILL** No. **110**

first reading copy (**white**)
color

ADOPT UNIFORM ARBITRATION ACT.

Respectfully report as follows: That **SENATE BILL** No. **110**

be amended as follows:

1. Title, line 6.

Following: "TO"

Strike: "LABOR"

Insert: "CERTAIN"

2. Page 1, line 25.

Following: line 24, "agreement"

Insert: "---exceptions"

Following: "written agreement."

Insert: "{1}"

3. Page 2, line 1.

Following: "arbitration"

Strike: remainder of line 1 through "made" on line 3

4. Page 2, line 3.

Following: "valid"

Strike: ", "

Insert: "and"

5. Page 2, line 4.

Following: "enforceable"

Strike: ", and irrevocable"

~~XXXXXX~~

~~XXXXXXXXXX~~

.....
Chairman.

SENATE BILL 110

6. Page 2, line 6.

Following: line 5

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 valid and enforceable except upon such grounds as exist at law or in equity for the revocation of a contract. This subsection does 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;

(d) claims for workers' compensation; and

(e) arbitration agreements between employers and employees or their respective representatives unless the agreement provides that (this act) applies.

(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 33-30-101(3) concerning only questions of medical necessity or whether the injury or illness is a preexisting condition.

(4) Notice that a contract is subject to arbitration pursuant to (this act) shall be typed in underlined capital letters on the first page of the contract; and unless such notice is displayed thereon, the contract may not be subject to arbitration."

7. Page 11, line 15.

Following: "directs."

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 advice of counsel as evidenced by counsel's signature thereto."

AND AS AMENDED

DO PASS

Senator Joe Mazurek

CLERICAL

Date: 7/16/85
Time: 5 PM

Senate Bill 110

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

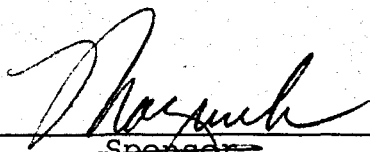
Senate Judiciary Rep of 7/6
amendment 6 in new (c)

"...upon the advice" (GA.)


amendment 2 p. 1, l. 25

following: "agreement" (first word l. 25)
insert: "-- exceptions"

following: ". "
insert: "(1)"



Spencer
Mazurek



Secretary of Senate
or
Chief Clerk

Legislative Council

STANDING COMMITTEE REPORT

February 6

19 85

MR. PRESIDENT

We, your committee on..... **JUDICIARY**

having had under consideration..... **SENATE BILL** No. **185**

second reading copy (yellow)
color

REVISE FEE ALLOWANCE ON DISCONTINUANCE.

Respectfully report as follows: That..... **SENATE BILL** No. **185**

be amended as follows:

1. Page 1, line 24.

Following: "EXCEED"

Insert: "the lesser of \$1,500 or"

AND AS AMENDED

DO PASS

~~DO NOT PASS~~

.....
Senator Joe Mazurek

Chairman.

STANDING COMMITTEE REPORT

February 6

19 85

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration SENATE BILL No. 240

first reading copy (white)
color

POLYGRAPH EXAMINATION - ADMISSIBLE BY STIPULATION AND FOR REVOCATION HEARING.

Respectfully report as follows: That SENATE BILL No. 240

~~DO NOT PASS~~

DO NOT PASS

.....
Senator Joe Mazurek

.....
Chairman.