

MINUTES OF THE MEETING
JUDICIAL COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

The meeting of the Judicial Committee was called to order by Chairman Earl Lory on January 9, 1987, at 8:00 a.m. in Room 312-D of the State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF HOUSE BILL NO. 53: Each year a code bill is introduced and presented. (Exhibit A). The code commissioner is by law required to review the codes for errors, omissions and duplications. Representative Ralph Eudaily, House District #60, presented steps to show what is actually done. His first clarification started with page 3 of the bill on line 4, it matches section 2 of the green sheets. The word department in this section is not defined and is substituted with department of administration. It is a clarification. Another example to look at is section 62 on page 79, line 19. This is in reference to the sheriff's retirement board. The sheriff's retirement fund is handled by the P.E.R.S. board and is no longer handled by the sheriff's retirement board but the code still has that information in it, so it is logical that that be deleted.

Rep. Eudaily called on Greg Petesce, newly appointed acting code commissioner, to explain further the new procedure implemented this year. Mr. Petesce said that at the time this bill was drafted, each proposed provision that affected an agency was sent to that agency for its review. This insured the agency that no substitutive changes in the law had occurred without the knowledge of the agency. All agencies have concurred with these changes. Mr. Petesce introduced a short form amendment in the green sheets to update some archaic terminology referring to aid to dependent children. The department of social rehabilitation services asked that a search of the code be done and wherever that term appeared that the substitute "aid to the families with dependant children" be inserted.

QUESTIONS (OR DISCUSSION) ON HOUSE BILL NO. 53: Representative Joan Miles asked Mr. Petesce if when he goes through the Supreme Court decisions and there is something declared unconstitutional, is it taken out of the code? Mr. Petesce replied that that has not been done in the past nor has it been done in this bill. Suggestive legislation files are kept of these things and presented to the Judiciary

committee for their consideration as to whether they wanted to address them.

There were no proponents or opponents and no further questions. The hearing on HB #53 was closed.

CONSIDERATION OF HOUSE BILL #42: Representative John Cobb, House District #42, sponsor of the bill, stated that the purpose of this bill was to clarify a ruling of the Montana Supreme Court. Rep. Cobb submitted amendments to this bill. (Exhibit B). In the past, the court defined what kind of duty a landowner had to someone who came onto his property and defined the status of trespasser, licensee and invitee. The court now states, in a brief way, that it is not going to care about status anymore. There will be one standard which is termed ordinary care. Two statutes in this bill deal with recreation and with whether a person coming onto a landowners property is an invitee or licensee.

SUPPORTERS: Mr. Scott Ross, on behalf of the coalition of stream access, went on record to support this bill.

Mr. Jim Flynn, Department of Fish, Wildlife and Parks, submitted written testimony. (Exhibit C). He supports the clarification of the legal standard governing landowner liability under two circumstances. The standard of wilful or wanton misconduct under present law and under the amendments of this bill, describe the duty owed by landowners or tenants toward recreationists portaging or using portage routes and toward persons recreating on land where no payment was made for the privilege.

Mr. Stan Bradshaw, State Council of Trout Unlimited, supports this bill in the fact that landowners should have limited liability.

Ms. Jean Klobnak, Montana Wildlife Federation, went on record to state that the federation supports this bill.

Representative Edward Grady supports HB #42 in hopes it will relieve landowners burdens.

QUESTIONS (OR DISCUSSION) ON HOUSE BILL NO. 42: Representative Tom Bulger, questioned Rep. Cobb regarding furnishing an example which would give the difference between the two standards of care. He explained the higher duty the landowner has if someone goes on his property with his knowledge. The landowner must make invitee aware of any existing dangers.

Representative Ralph Eudaily questioned Rep. Cobb regarding amendment two, which states "as otherwise provided by law".

Rep. Cobb asked John MacMaster, staff attorney, to explain this. Mr. MacMaster replied that Mr. Petesce decided that instead of specifically listing terms this particular term would be have a general use.

Representative Tom Hannah asked Rep. Cobb about the term recreational use of land. As an example he referred to a neighbors child that comes into his ditch and drowns. Whose duty would it be? Rep. Cobb answered by stating that the child was not using the ditch for recreational purposes so the duty is at a lower rate. Rep. Cobb explained that this bill will clarify but will not change the bill. No law is being rewritten.

There were no further proponents or opponents. Rep. Cobb closed.

EXECUTIVE SESSION:

ACTION ON HB #53: Rep. Gould moved that HB #53 DO PASS. The motion was seconded. Question was called, and all voted in favor with the exception of Rep. Hannah.

ACTION ON HB #42: Rep. Mercer moved that HB #42 DO PASS AS AMENDED. The motion was seconded. Question was called, and the vote was carried unanimously.

ACTION ON HB #21: Rep. Brown read the amendments to be added. (Exhibit D). He stated that he feels this is a reversion clause that basically says, if the Supreme Court upholds the South Dakota suit, the Montana law reverts back to existing statute, age 19. Rep. Brown moves the amendments. Discussion on the amendments follows: Rep. Addy tries to understand the mechanics of the bill and questions if we are amending the title or the existing amendment. Chairman Lory requests that John MacMaster, staff attorney, clarify this point. Mr. MacMaster states that if the United States Supreme Court strikes down the federal law that is requiring us to amend this, then what will happen under the new section 16 that Rep. Brown is putting in, is that the first ten (10) sections now in the bill will be repealed. The first five (5) sections which are essentially the grandfather will be repealed. Section 6-10 which then sets the age at 21 will also be repealed. Section 11, 12, 13, 14, and 15 of Rep. Brown's amendments will go into effect. They are the law as it currently reads. The effective date is essentially in amendment #5.

Rep. Miles feels that the bill amendments do not look different to her.

Mr. MacMaster replied that it does look funny but what we have right now is this bill. If the amendments are adopted it will not be law until it passes the house, senate and is signed by the governor. Until that time, in looking at it there is nothing amended. Once the governor signs the bill that will be the law and these sections will read differently and will in effect amend the first ten (10) sections of the bill. Presently, sections 6-10 will go into effect on July 1, 1987, and the drinking age will be 21 and no one will be grandfathered in and we will get the highway funds. If the effective date is amended to May 1, 1987, then the grandfather clause is saved and Montana will get the highway funds.

Rep. Grady stated that the people of Montana have overwhelmingly voted to raise the drinking age and he wants to listen to the people of his district.

There being no call for a roll call vote, Chairman Lory asked for a hand vote and HB #21 with Rep. Brown's first set of amendments were DO PASS WITH AMENDMENTS, 10-5.

Rep. Brown offered his second set of amendments. (Exhibit E). This set of amendments would require the change of the effective date. Chairman Lory asked Mr. MacMaster about the effective date change. Mr. MacMaster stated the change in the effective date was made throughout the bill and the result is that they will be effective since April 1, 1987. A hand vote was taken on this amendment and all members with the exception of one voted in favor of the amendment.

A discussion followed regarding the rule making authority of the Department of Revenue.

Rep. Daily questioned the department's authority. Mr. MacMaster explained that the past legislature passed a law giving them rule making authority.


Rep. Miles stated that the department does have rules to follow and we must have the date to reflect the grandfathering clause.

Rep. Addy motioned to do pass with amendments. The motion was seconded and all but two members voted in favor to DO PASS WITH AMENDMENTS.

ACTION ON HOUSE BILL NO. 37: Rep. Giacometto moved that this bill pass as amended. (Exhibit F). It was motioned and seconded. A hand vote was taken and all members with the exception of Rep. Hannah and Rep. Daily voted DO PASS AS AMENDED.

Page Five
Judiciary Committee
January 9, 1987

ADJOURN: A motion having been made and seconded, the meeting adjourned at 11:05 a.m.



REP. EARL LORY, Chairman

DAILY ROLL CALL

JUDICIARY

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date January 9, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)	✓		
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)	✓		
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)	✓		
EARL LORY (R)	✓		

STANDING COMMITTEE REPORT

January 9,

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JUDICIARY

Mr. Speaker: We, the committee on

report **House Bill No. 21**

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☒ as amended
☐ statement of intent attached

Chairman

AMENDMENTS TO HB 21, INTRODUCED COPY, ADOPTED BY HOUSE JUDICIARY COMMITTEE ON JANUARY 9, 1987. "AN ACT RAISING THE LEGAL DRINKING AGE FROM 19 TO 21; ALLOWING THOSE PERSONS OF LEGAL DRINKING AGE TO CONTINUE TO DRINK; AMENDING SECTIONS 16-3-301, 16-3-305, 16-6-314, AND 1. Page 1, line 6. 45-5-624, MCA."

Following: "DRINK;"

Insert: "RETURNING THE LEGAL DRINKING AGE TO 19 IF THE UNITED STATES SUPREME COURT INVALIDATES THE PROVISION OF FEDERAL LAW REQUIRING STATES TO RAISE THE AGE TO 21 OR LOSE A PORTION OF FEDERAL HIGHWAY FUNDS;"

2. Page 1, line 7.

Strike: "16-3-305"

Insert: "16-6-305"

3. Pages 1 through 5.

Strike: "July"

Insert: "April"

In the following places:

Page 1, lines 20 and 24

Page 2, lines 13, 17, and 23

Page 3, lines 3 and 10

Page 4, lines 2 and 15

Page 5, line 9

4. Page 3, line 10.

Strike: "after"

Insert: "before"

5. Page 11.

Following: line 24

Insert: "Section 11. Section 16-3-301, MCA, is amended to read:

"16-3-301. Unlawful purchases, sales, or deliveries.

(1) It shall be unlawful for a licensed retailer to purchase or acquire beer from anyone except a brewer or wholesaler licensed under the provisions of this code.

(2) It shall be unlawful for any licensee, his or her

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JANUARY 9, 1987

employee or employees, or any other person to sell, deliver, or give away or cause or permit to be sold, delivered, or given away any alcoholic beverage to:

(a) any person under 19 years of age;

(b) any intoxicated person or any person actually, apparently, or obviously intoxicated.

(3) Any person under 19 years of age or other person who knowingly misrepresents his or her qualifications for the purpose of obtaining an alcoholic beverage from such licensee shall be equally guilty with said licensee and shall, upon conviction thereof, be subject to the penalty provided in 45-5-624; provided, however, that nothing herein contained shall be construed as authorizing or permitting the sale of an alcoholic beverage to any person in violation of any federal law.

(4) It shall be further mandatory under the provisions of this code that all licensees display in a prominent place in their premises a placard as issued by the department stating fully the consequences for violations of the provisions of this code by persons under 19 years of age."

Section 12. Section 16-6-305, MCA, is amended to read:

"16-6-305. Age limit for sale of alcoholic beverages.

(1) Except in the case of an alcoholic beverage given to a person under 19 years of age by his parent or guardian for beverage or medicinal purposes or administered to him by his physician or dentist for medicinal purposes or sold to him by a vendor or druggist upon the prescription of a physician, no person shall sell, give, or otherwise supply an alcoholic beverage to any person under 19 years of age or permit any person under that age to consume an alcoholic beverage.

(2) Any person shall be guilty of a misdemeanor who:

(a) invites a person under the age of 19 years into a public place where an alcoholic beverage is sold and treats, gives, or purchases an alcoholic beverage for such person;

(b) permits such person in a public place where an alcoholic beverage is sold to treat, give, or purchase liquor for him; or

(c) holds out such person to be 19 years of age or older to the owner of the establishment or his or her employee or employees.

(3) It is unlawful for any person to fraudulently misrepresent his or her age to any dispenser of alcoholic beverages or to falsely procure any identification card or to alter any of the statements contained in any identification card."

Section 13. Section 16-6-314, MCA, is amended to read:

"16-6-314. Penalty for violating code -- revocation of

JANUARY 9, 1987

license -- penalty for violation by underage person. (1) A person who violates a provision of this code is guilty of a misdemeanor punishable as provided in 46-18-212, except as is herein otherwise provided.

(2) If a retail licensee is convicted of an offense under this code, his license shall be immediately revoked or, in the discretion of the department, such other sanction imposed as may be authorized under 16-4-406.

(3) A person under 19 years of age who violates 16-3-301(3) or 16-6-305(3) is subject to the penalty provided in 45-5-624(2)."

Section 14. Section 45-5-623, MCA, is amended to read:

"45-5-623. Unlawful transactions with children.

(1) A person commits the offense of unlawful transactions with children if he knowingly:

(a) sells or gives explosives to a child under the age of majority except as authorized under appropriate city ordinances;

(b) sells or gives intoxicating substances other than alcoholic beverages to a child under the age of majority;

(c) sells or gives alcoholic beverages to a person under 19 years of age; or

(d) being a junk dealer, pawnbroker, or secondhand dealer, receives or purchases goods from a child under the age of majority without authorization of the parent or guardian.

(2) A person convicted of the offense of unlawful transactions with children shall be fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. A person convicted of a second offense of unlawful transactions with children shall be fined not to exceed \$1,000 or be imprisoned in the county jail for any term not to exceed 6 months, or both."

Section 15. Section 45-5-624, MCA, is amended to read:

"45-5-624. Unlawful possession of an intoxicating substance -- interference with sentence or court order. (1) A person under the age of 18 years commits the offense of possession of an intoxicating substance if he knowingly has in his possession an intoxicating substance other than an alcoholic beverage. A person under the age of 19 commits the offense of possession of an intoxicating substance if he knowingly has in his possession an alcoholic beverage, except that he does not commit the offense when in the course of his employment it is necessary to possess alcoholic beverages.

(2) A person convicted of the offense of possession of an intoxicating substance shall:

(a) be fined not to exceed \$50;

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(b) be ordered to complete and, if financially able, pay all costs of his participation in a community-based substance abuse information course;

(c) have his driver's license confiscated by the court for not more than 90 days and be ordered not to drive during that period if he was driving or otherwise in actual physical control of a motor vehicle when the offense occurred; or

(d) be sentenced to any combination of these penalties.

(3) A defendant who fails to comply with a sentence and is under 21 years of age and was under 18 years of age when he failed to comply must be transferred to the youth court. If proceedings for violation of subsection (1) are held in the youth court, the penalties in subsection (2) do not apply. If proceedings for violation of subsection (1) or for failure to comply with a sentence are held in the youth court, the offender shall be treated as an alleged youth in need of supervision as defined in 41-5-103(13). In such case, the youth court may enter its judgment under 41-5-523.

(4) A person commits the offense of interference with a sentence or court order if he purposely or knowingly causes his child or ward to fail to comply with a sentence imposed under this section or a youth court disposition order for a youth found to have violated this section and upon conviction shall be fined \$100 or imprisoned in the county jail for 10 days, or both."

NEW SECTION. Section 16. Repealer. Sections 1 through 10 of this act are repealed.

NEW SECTION. Section 17. Extension of authority. Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

NEW SECTION. Section 18. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Renumber: subsequent section

4. Page 12, line 1.

Following: "5"

Insert: ", 17, 18, and this section"

Strike: "July"

Insert: "April"

5. Page 12, line 2.

Following: "and"

Insert: ", except for sections 17, 18, and this section,"

Strike: "July"

Insert: "April"

6. Page 12, line 3.

Strike: "July"

Insert: "April"

Following: line 3

Insert: "(3) If the United States supreme court invalidates the provisions of federal law that require states to raise the legal age for purchasing and possessing alcoholic beverages to 21 as a condition of full receipt of federal highway funds, the governor of Montana shall immediately certify the fact of the invalidation to the secretary of state of Montana. Sections 11 through 16 are effective upon certification."

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STANDING COMMITTEE REPORT

January 9

19 87

Mr. Speaker: We, the committee on JUDICIARY

report House Bill No. 37

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☒ as amended
☐ statement of intent attached

Chairman

"AN ACT TO CLARIFY THAT A DEFENDANT'S RECORD IS EXPUNGED AFTER DEFERRED IMPOSITION; AND AMENDING SECTION 46-18-204, MCA."

1. Page 1, line 18.

Strike: "clerk of the"

2. Page 1, line 20.

Following: "record."

Insert: "The order must adequately identify the defendant, such as by sex, race, date of birth, and the current status of the charges to be expunged."

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STANDING COMMITTEE REPORT

January 9,

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Mr. Speaker: We, the committee on JUDICIARY
report House Bill No. 42

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☒ as amended
☐ statement of intent attached

AMENDMENTS TO HB 42, INTRODUCED COPY, PROPOSED BY REP. COBR. Chairman
"AN ACT TO CLARIFY THE LEGAL STANDARD GOVERNING LANDOWNER LIABILITY; AND
AMENDING SECTIONS 23-2-321 AND 70-16-302, MCA."

1. Title, line 6.
Following: "23-2-321"
Insert: ", 27-1-701,"

2. Page 2, line 14.
Following: line 13
Insert: "Section 2. Section 27-1-701, MCA, is amended to read:
"27-1-701. Liability for negligence as well as willful
acts. Everyone Except as otherwise provided by law,
everyone is responsible not only for the results of his
willful acts but also for an injury occasioned to another by
his want of ordinary care or skill in the management of his
property or person except so far as the latter has willfully
or by want or ordinary care brought the injury upon
himself.""

Renumber: subsequent section

3. Page 2, line 16.
Following: "or"
Insert: "his agent or"

4. Page 2, line 16.
Strike: "landowner" through "tenant" on line 24
Insert: "person who makes recreational use of any property in
the possession or under the control of another, with or
without permission and without giving a valuable
consideration therefor, does so without any assurance from
the landowner, his agent, or his tenant that the property is
safe for any purpose. The landowner, his agent, or his
tenant owes the person no duty of care, except that the
landowner, his agent, or his tenant"

5. Page 3, line 1.
Strike: "only"

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STANDING COMMITTEE REPORT

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JUDICIARY

Mr. Speaker: We, the committee on
report **House Bill No. 53**

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☐ as amended
☐ statement of intent attached


Chairman

**"AN ACT TO GENERALLY REVISE AND CLARIFY THE MONTANA CODE ANNOTATED; AND
REPEALING SECTIONS 2-17-106, 2-17-109, 2-17-110, 7-15-4122, 7-33-4203,
AND 50-5-421 THROUGH 50-5-424, MCA."**


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1987 CODE COMMISSIONER WILL SUBMIT

Section 1. 1-1-1987. Major amendments to the Code of Ethics for State and Local Officials, Chapter 1, Article 1, Section 1.1, which was adopted by the Legislature in 1985, and the amendments thereto, are hereby repealed and the following provisions are hereby enacted:

Section 1.1. 1-1-1987. The Code of Ethics for State and Local Officials, Chapter 1, Article 1, Section 1.1, which was adopted by the Legislature in 1985, and the amendments thereto, are hereby repealed and the following provisions are hereby enacted:

Section 1.1. 1-1-1987. The Code of Ethics for State and Local Officials, Chapter 1, Article 1, Section 1.1, which was adopted by the Legislature in 1985, and the amendments thereto, are hereby repealed and the following provisions are hereby enacted:

CODE COMMISSIONER REPORT

1986

Section 1.1. 1-1-1987. The Code of Ethics for State and Local Officials, Chapter 1, Article 1, Section 1.1, which was adopted by the Legislature in 1985, and the amendments thereto, are hereby repealed and the following provisions are hereby enacted:

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Section 1.1. 1-1-1987. The Code of Ethics for State and Local Officials, Chapter 1, Article 1, Section 1.1, which was adopted by the Legislature in 1985, and the amendments thereto, are hereby repealed and the following provisions are hereby enacted:

1987 CODE COMMISSIONER BILL SUMMARY

Section 1. 2-15-1857. Makes permanent bracketed language inserted to clarify that the governor has the appointing power.

Section 2. 2-18-703. In (4) substitutes "department of administration" for "department" which is not defined.

Section 3. 5-11-206. In (3) substitutes "code sections affected list" for "code index" to accurately reflect the content of the document.

Section 4. 5-11-208. Revises internal reference which included 5-11-204, the section authorizing the secretary of state to assign chapter numbers, not the legislative council.

Section 5. 7-2-2730. Section 6. 7-2-2748. Section 7. 7-2-2749. Revise reference to reflect repeal of 7-7-2105.

Section 8. 7-3-4264. Section 9. 7-3-4265. Revise reference to reflect repeal of 7-3-4263.

Section 10. 7-4-2631. In (1)(j) clarifies that fees are no longer contained in the statutes but are set by rule. (See 30-9-403(5) and (12).)

Section 11. 7-6-308. Removes reference to "7-6-304" because mill values are not used in that section.

Section 12. 7-6-4423. In (1)(c) substitutes "7-12-4182" for "7-12-4181" because that is the section providing for declaring the assessment delinquent.

Section 13. 7-6-4439. Revises reference to reflect repeal of 7-6-4433 and 7-6-4435.

Section 14. 7-6-4463. Revises outline form to remove internal inconsistency.

Section 15. 7-7-2302. Revises reference to reflect repeal of 7-7-2208 and 7-7-2271.

Section 16. 7-7-4302. Revises reference to reflect repeal of 7-7-4207 and 7-7-4271.

Section 17. 7-12-1103. Substitutes "7-12-1121" for "7-12-1112" to reflect that board of trustees is authorized in 7-12-1121.

Section 18. 7-12-4429. In (2) substitutes "7-12-4402" for "7-12-4405" because districts are created under 7-12-4402.

Section 19. 7-13-114. Deletes reference to "the powers and duties of the county commissioners" because not all sections referred to relate to county commissioners and adds language clarifying that the referenced sections are inapplicable if in conflict with Title 7, chapter 13, part 1.

Section 20. 7-13-2242. Substitutes "7-13-2239" for "7-13-2240" because 7-13-2239 contains the requirement for naming the person to whom the petition is returned.

Section 21. 7-13-2510. Section 22. 7-14-1133. Section 23. 7-14-2745. Section 25. 7-15-4322. Section 26. 7-31-112. Section 29. 7-34-2415. Section 71. 20-9-410. Section 128. 67-11-303. Section 129. 69-4-332. Clarify that 17-5-102 no longer limits interest but allows the governing body to set interest rates.

Section 24. 7-14-2823. In (2)(a) and (2)(c) inserts "on" for grammatical reasons.

Section 27. 7-32-4153. Revises reference to reflect the fact that the word "mayor" is not used in 7-32-4155 through 7-32-4159.

Section 28. 7-34-2131. Removes reference to "second or third class" school districts because there is no longer a difference in bonding for districts based on class.

Section 30. 10-4-101. Section 36. 15-6-135. Section 37. 15-8-111. Section 38. 15-8-201. Section 44. 15-23-701. Section 45. 15-24-901. Section 66. 20-3-108. Section 76. 30-10-103. Section 77. 30-10-204. Section 84. 33-20-1111. Section 90. 37-16-404. Section 93. 37-51-301. Section 94. 37-72-101. Section 97. 39-71-403. Section 105. 46-18-222. Section 106. 46-18-231. Section 107. 46-19-103. Section 111. 53-5-503. Section 112. 53-6-141. Section 113. 53-20-202. Section 115. 61-5-121. Section 131. 71-3-302. Section 138. 75-1-1101. Section 143. 82-4-232. Section 145. 85-2-322. Section 148. 85-2-507. Section 149. 85-8-350. Section 154. 90-8-104. Correct erroneous subsection references.

Section 31. 13-1-101. In (10) substitutes "or" for "and" because reference should be disjunctive rather than conjunctive.

Section 32. 13-1-203. Removes reference to mileage and expenses "for county officials" because 2-18-501 through 2-18-503 set rates for all state employees.

Section 33. 13-17-103. In (8) substitutes "is" for "will be" to reflect contractual requirement rather than future provision.

Section 34. 13-37-303. In (1) in last sentence inserts "to" for proper grammar.

Section 35. 15-1-101. Section 46. 15-24-1102. Section 47. 15-24-1103. Extend reference to include all classes of property.

Section 39. 15-10-203. Section 40. 15-10-204. Insert "or proposed" before "budget" to reflect name change of county preliminary budget created by Ch. 206, L. 1985.

Section 41. 15-16-305. Substitutes third "Tuesday" of February for third "Monday" because third Monday is Washington's birthday, a legal holiday.

Section 42. 15-17-101. Moves "that" in lead-in phrase for proper outline form.

Section 43. 15-23-616. Deletes reference to "net proceeds" because 15-23-602 does not use that phrase.

Section 48. 15-30-111. In (2)(i) inserts reference to 19-13-1003, to reflect tax exemption contained in firefighters' unified retirement system.

Section 49. 15-30-321. In (1) in second parenthetical makes language consistent with first parenthetical.

Section 50. 15-31-406. Revises reference to reflect repeal of 15-31-542.

Section 51. 15-35-102. In (12) revises definition to reflect that "surface mining" is not defined in 82-4-203.

Section 52. 15-59-121. Revises reference to reflect repeal of 15-59-103 and renumbering of 15-59-111 as this section.

Section 53. 16-1-105. Revises section to reflect repeal of Title 16, chapter 5.

Section 54. 16-1-306. Inserts references to reflect statutory assignment of revenues.

Section 55. 17-5-1202. Corrects improper citation to federal act.

Section 56. 17-6-103. Adds reference to bonds issued under Title 7, chapter 12, part 42, for consistency because part 42 is a continuation of part 41.

Section 57. 17-6-302. Substitutes "17-6-306" for "17-6-305" to reflect establishment of fund in 17-6-306.

Section 58. 18-1-103. In (1) and (4) deletes "18-1-112" because "resident" is not used in 18-1-112.

Section 59. 18-2-201. In (1) substitutes "85-1-219" for "18-1-219" to correct a typographical error and to correctly reflect codification of section 1 of Ch. 498, L. 1985. In (3) inserts "of" for grammatical purposes.

Section 60. 19-3-906. In (2)(b) inserts "he" for grammatical purposes to conform with (2)(a).

Section 61. 19-4-902. Revises section to reflect that only superannuation "allowance" is prescribed under Title 19, chapter 4, part 8.

Section 62. 19-7-101. Section 63. 19-7-405. Delete references to sheriffs' retirement board which no longer exists. System is administered by public employees retirement board.

Section 64. 19-10-202. In (2) in four places inserts references to town to reflect the content of the section.

Section 65. 19-11-203. Deletes reference to Title 19, chapter 11, part 3, which was repealed.

Section 67. 20-5-301. In (3)(e) revises text for proper outline form.

Section 68. 20-7-117. In (1) in two places substitutes "have" for "has" for proper grammatical use of tense.

Section 69. 20-9-165. Deletes "in accordance with 20-15-302" to reflect repeal of 20-15-302.

Section 70. 20-9-343. In (3)(c) inserts language to reflect distribution of funds under 15-35-108, in (3)(g) deletes redundant language, and in (4) removes bracketed language because there is no longer a permissive account.

Section 72. 20-15-403. Deletes reference to 7-8-2215 because "school district" is not used in that section.

Section 73. 20-15-404. In (4) extends reference to include 20-7-713.

Section 74. 20-25-302. At end of (2) clarifies that nonresident students are not defined in 20-25-421, but that charges are made under 20-25-421 for nonresident students.

Section 75. 30-4-302. Numbers subsections to reflect MCA style.

Section 78. 32-1-803. Revises reference to reflect repeal of 32-1-304.

Section 79. 33-1-104. Section 80. 33-1-313. Section 81. 33-1-317. Section 85. 33-30-111. Section 86. 33-30-112. Section 87. 33-30-113. Section 88. NEW. Make 33-30-1012, which was enacted without a codification instruction, subject to the general provisions of the insurance law.

Section 82. 33-17-211. In (9) clarifies that 33-17-212 requires an examination but does not prescribe the examination fee.

Section 83. 33-20-103. Revises reference to reflect renumbering of 33-20-109 as 33-20-131.

Section 89. 35-12-1308. Revises reference to reflect that this section itself is not included in those which may be violated.

Section 91. 37-30-425. In (7) revises language to conform to 37-30-203, which does not describe offenses but grants rulemaking authority.

Section 92. 37-42-305. Deletes reference to 37-42-301 because it does not refer to an examination.

Section 95. 39-51-201. In (4) hyphenates "52-consecutive-week" for proper usage, and in (11) inserts "to be paid" for readability.

Section 96. 39-71-118. In (1)(d) substitutes "superintendent of public instruction" for "board of public education" to reflect the superintendent's authority to approve vo-tech programs.

Section 98. 40-4-209. In (5) clarifies that the department of revenue is the agency to adopt guidelines for child support enforcement.

Section 99. 41-3-611. Substitutes "41-3-610" for "41-3-609" because other placement proceedings are held pursuant to 41-3-610.

Section 100. 41-5-206. Deletes (1)(a)(ii)(F) because it is covered under (1)(a)(i) and applies to youths over 12, and corrects internal reference as a result of this change.

Section 101. 41-5-523. In (2) inserts "a" for grammatical reasons.

Section 102. 44-1-403. Substitutes "five" for "12" to reflect the proper number of highway districts.

Section 103. 44-1-1005. In (3) substitutes "provided for" for "defined" because subsection (1)(a) does not define motor vehicle inspections but grants rulemaking authority.

Section 104. 46-18-201. In (4) corrects reference and adds language to clarify that the mandatory minimum sentence applies to aggravated assault rather than felony assault.

Section 108. 50-5-101. In (19) substitutes "youth care facilities" for "boarding or foster homes for children" to reflect the terminology used in Title 41, chapter 3.

Section 109. 50-73-102. Deletes definition of "following shot" because it is not used in Title 50, chapter 73.

Section 110. 53-2-813. Deletes reference to subsection (1)(b) and deletes the subsection in its entirety because it is no longer applicable.

Section 114. 61-3-102. Makes permanent the bracketed language "in performing its duties under this title".

Section 116. 61-9-402. In (6) deletes reference to subsections (1), (2), and (3) because amber lights aren't mentioned in those subsections.

Section 117. 61-10-108. Section 118. 61-10-122. Section 119. 61-10-124. Section 120. 61-01-128. Section 121. 61-10-141. Section 122. 61-10-142. Section 123. 61-10-143. Clarify that department referred to is highways. Title definition found in 61-1-301 refers to department of justice.

Section 124. 61-11-203. Makes subsection (3) freestanding for proper outline form.

Section 125. 67-3-101. In (2) inserts "sales" before "dealers" to conform to first clause of (2).

Section 126. 67-3-201. Section 127. 67-3-202. Clarify that subsection (3) of 67-3-201 applies to itself.

Section 130. 69-14-805. Revises reference to reflect repeal of 69-14-802.

Section 132. 71-3-603. In (1) substitutes "71-3-605" for "71-3-606" because 71-3-605 provides for filing by the lien claimant, and in (2) substitutes "71-3-606" for "71-3-605" because 71-3-606 provides for filing the claim of the landowner.

Section 133. 71-3-611. Substitutes "71-3-603" for "71-3-605" because 71-3-603 contains the 3-month time limit.

Section 134. 72-11-103. Substitutes "an ancestor" for "the ancestors" for grammatical propriety.

Section 135. 72-16-454. Substitutes "35%" for "65%" to reflect 1983 amendment of 72-16-452.

Section 136. 72-17-206. Substitutes "72-17-301(2)" for "72-17-310(2)" in two places to correct error and reflect renumbering of sections.

Section 137. 72-17-311. Removes an unclear reference to a subsection and rearranges terms for clarity.

Section 139. 75-20-216. Revises reference to reflect repeal of 75-20-214.

Section 140. 76-3-103. In (12) and (13) removes reference to former title of act and makes parenthetical code citation permanent.

Section 141. 80-4-427. Substitutes "80-4-428" for "80-4-429" because the criminal penalty for operating without a license is found in 80-4-428.

Section 142. 81-8-216. In two places revises reference to reflect repeal of 81-8-257.

Section 144. 82-11-131. Revises last sentence for comprehension.

Section 146. 85-2-421. Section 147. 85-2-422. Revise reference to reflect repeal of 85-2-425.

Section 150. 85-8-624. In (3)(a), (3)(c), and (3)(d) corrects erroneous subsection reference, and in (3)(b) substitutes "85-8-302" for "85-8-304" because 85-8-302 provides for the manner of conducting the election.

Section 151. 87-1-209. Clarifies that the notice requirement is found in subsection (3)(b) of this section.

Section 152. 87-3-101. Substitutes "61-1-202" for "61-1-201" because 61-1-202 defines public highway.

Section 153. 87-5-109. At end of (2) substitutes "87-5-105" for "87-5-104" because 87-5-105 grants the authority for issuing regulations.

Section 155. NEW. Requested by department of social and rehabilitation services to revise archaic terminology.

Section 156. Repealer. (1) Section 2-17-106 is no longer necessary, particularly because of the construction of the DNRC building. Section 2-17-101 governs space assignment generally.

(2) Section 2-17-109 and 2-17-110 were rendered ineffective by Ch. 33, Sp. L. June 1986, which transferred renovation funds to the long-range building debt service fund.

(3) Sections 7-15-4122 and 7-33-4203 were held to have been impliedly repealed by the state building code in 40 A.G. Op. 76 (1984).

(4) Sections 50-5-601 through 50-5-603 and 50-5-611 are identical to sections 50-5-421 through 50-5-424 and are therefore unnecessary.

MGMT86:6301a:ee:rev.6357g:jj

AMENDMENTS TO HB 42, INTRODUCED COPY, PROPOSED BY REP. COBB.

1. Title, line 6.

Following: "23-2-321"

Insert: ", 27-1-701,"

2. Page 2, line 14.

Following: line 13

Insert: "Section 2. Section 27-1-701, MCA, is amended to read:

"27-1-701. Liability for negligence as well as willful acts. Everyone Except as otherwise provided by law, everyone is responsible not only for the results of his willful acts but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person except so far as the latter has willfully or by want or ordinary care brought the injury upon himself."

Renumber: subsequent section

3. Page 2, line 16.

Following: "or"

Insert: "his agent or"

4. Page 2, line 16.

Strike: "landowner" through "tenant" on line 24

Insert: "person who makes recreational use of any property in the possession or under the control of another, with or without permission and without giving a valuable consideration therefor, does so without any assurance from the landowner, his agent, or his tenant that the property is safe for any purpose. The landowner, his agent, or his tenant owes the person no duty of care, except that the landowner, his agent, or his tenant"

5. Page 3, line 1.

Strike: "only"

AHB42a/JM/JM1

HB 42
January 9, 1987

Testimony presented by Jim Flynn, Dept. of Fish, Wildlife & Parks

The purpose of HB 42 is to clarify the legal standard governing landowner liability under two circumstances. The standard of willful or wanton misconduct under present law and under the amendments of HB 42, describe the duty owed by landowners or tenants toward recreationists portaging or using portage routes and toward persons recreating on land where no payment was made for the privilege.

Because the Montana Supreme Court, in Limberhand v. Big Ditch Company, no longer makes the traditional distinctions between invitee, licensee and trespasser, removing language in the two statutes referring to invitee or licensee will help avoid any confusion as to the meaning of those two statutes.

The department supports this clarification and believes the amendments remove any possible doubt that the landowner's duty of care is defined by the willful or wanton misconduct standard.

AMENDMENTS TO HB 21, INTRODUCED COPY, ADOPTED BY HOUSE JUDICIARY
COMMITTEE ON JANUARY 9, 1987.

1. Page 1, line 6.

Following: "DRINK;"

Insert: "RETURNING THE LEGAL DRINKING AGE TO 19 IF THE
UNITED STATES SUPREME COURT INVALIDATES THE PROVISION OF
FEDERAL LAW REQUIRING STATES TO RAISE THE AGE TO 21 OR
LOSE A PORTION OF FEDERAL HIGHWAY FUNDS;"

2. Page 1, line 7.

Strike: "16-3-305"

Insert: "16-6-305"

3. Pages 1 through 5.

Strike: "July"

Insert: "April"

In the following places:

Page 1, lines 20 and 24

Page 2, lines 13, 17, and 23

Page 3, lines 3 and 10

Page 4, lines 2 and 15

Page 5, line 9

4. Page 3, line 10.

Strike: "after"

Insert: "before"

5. Page 11.

Following: line 24

Insert: "Section 11. Section 16-3-301, MCA, is amended to read:

"16-3-301. Unlawful purchases, sales, or deliveries.

(1) It shall be unlawful for a licensed retailer to purchase
or acquire beer from anyone except a brewer or wholesaler
licensed under the provisions of this code.

(2) It shall be unlawful for any licensee, his or her
employee or employees, or any other person to sell, deliver,
or give away or cause or permit to be sold, delivered, or
given away any alcoholic beverage to:

(a) any person under 19 years of age;

(b) any intoxicated person or any person actually,
apparently, or obviously intoxicated.

(3) Any person under 19 years of age or other person
who knowingly misrepresents his or her qualifications for
the purpose of obtaining an alcoholic beverage from such
licensee shall be equally guilty with said licensee and
shall, upon conviction thereof, be subject to the penalty
provided in 45-5-624; provided, however, that nothing herein
contained shall be construed as authorizing or permitting

the sale of an alcoholic beverage to any person in violation of any federal law.

(4) It shall be further mandatory under the provisions of this code that all licensees display in a prominent place in their premises a placard as issued by the department stating fully the consequences for violations of the provisions of this code by persons under 19 years of age."

Section 12. Section 16-6-305, MCA, is amended to read:

"16-6-305. Age limit for sale of alcoholic beverages.

(1) Except in the case of an alcoholic beverage given to a person under 19 years of age by his parent or guardian for beverage or medicinal purposes or administered to him by his physician or dentist for medicinal purposes or sold to him by a vendor or druggist upon the prescription of a physician, no person shall sell, give, or otherwise supply an alcoholic beverage to any person under 19 years of age or permit any person under that age to consume an alcoholic beverage.

(2) Any person shall be guilty of a misdemeanor who:

(a) invites a person under the age of 19 years into a public place where an alcoholic beverage is sold and treats, gives, or purchases an alcoholic beverage for such person;

(b) permits such person in a public place where an alcoholic beverage is sold to treat, give, or purchase liquor for him; or

(c) holds out such person to be 19 years of age or older to the owner of the establishment or his or her employee or employees.

(3) It is unlawful for any person to fraudulently misrepresent his or her age to any dispenser of alcoholic beverages or to falsely procure any identification card or to alter any of the statements contained in any identification card."

Section 13. Section 16-6-314, MCA, is amended to read:

"16-6-314. Penalty for violating code -- revocation of license -- penalty for violation by underage person. (1) A person who violates a provision of this code is guilty of a misdemeanor punishable as provided in 46-18-212, except as is herein otherwise provided.

(2) If a retail licensee is convicted of an offense under this code, his license shall be immediately revoked or, in the discretion of the department, such other sanction imposed as may be authorized under 16-4-406.

(3) A person under 19 years of age who violates 16-3-301(3) or 16-6-305(3) is subject to the penalty provided in 45-5-624(2)."

Section 14. Section 45-5-623, MCA, is amended to read:

"45-5-623. Unlawful transactions with children.

(1) A person commits the offense of unlawful transactions with children if he knowingly:

(a) sells or gives explosives to a child under the age of majority except as authorized under appropriate city ordinances;

(b) sells or gives intoxicating substances other than alcoholic beverages to a child under the age of majority;

(c) sells or gives alcoholic beverages to a person under 19 years of age; or

(d) being a junk dealer, pawnbroker, or secondhand dealer, receives or purchases goods from a child under the age of majority without authorization of the parent or guardian.

(2) A person convicted of the offense of unlawful transactions with children shall be fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. A person convicted of a second offense of unlawful transactions with children shall be fined not to exceed \$1,000 or be imprisoned in the county jail for any term not to exceed 6 months, or both."

Section 15. Section 45-5-624, MCA, is amended to read:

"45-5-624. Unlawful possession of an intoxicating substance -- interference with sentence or court order. (1) A person under the age of 18 years commits the offense of possession of an intoxicating substance if he knowingly has in his possession an intoxicating substance other than an alcoholic beverage. A person under the age of 19 commits the offense of possession of an intoxicating substance if he knowingly has in his possession an alcoholic beverage, except that he does not commit the offense when in the course of his employment it is necessary to possess alcoholic beverages.

(2) A person convicted of the offense of possession of an intoxicating substance shall:

(a) be fined not to exceed \$50;

(b) be ordered to complete and, if financially able, pay all costs of his participation in a community-based substance abuse information course;

(c) have his driver's license confiscated by the court for not more than 90 days and be ordered not to drive during that period if he was driving or otherwise in actual physical control of a motor vehicle when the offense occurred; or

(d) be sentenced to any combination of these penalties.

(3) A defendant who fails to comply with a sentence and is under 21 years of age and was under 18 years of age when he failed to comply must be transferred to the youth court. If proceedings for violation of subsection (1) are held in the youth court, the penalties in subsection (2) do not apply. If proceedings for violation of subsection (1) or for failure to comply with a sentence are held in the youth court, the offender shall be treated as an alleged youth in need of supervision as defined in 41-5-103(13). In such case, the youth court may enter its judgment under 41-5-523.

(4) A person commits the offense of interference with a sentence or court order if he purposely or knowingly causes

his child or ward to fail to comply with a sentence imposed under this section or a youth court disposition order for a youth found to have violated this section and upon conviction shall be fined \$100 or imprisoned in the county jail for 10 days, or both."

NEW SECTION. Section 16. Repealer. Sections 1 through 10 of this act are repealed.

NEW SECTION. Section 17. Extension of authority. Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

NEW SECTION. Section 18. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Renumber: subsequent section

4. Page 12, line 1.

Following: "5"

Insert: ", 17, 18, and this section"

Strike: "July"

Insert: "April"

5. Page 12, line 2.

Following: "and"

Insert: ", except for sections 17, 18, and this section,"

Strike: "July"

Insert: "April"

6. Page 12, line 3.

Strike: "July"

Insert: "April"

Following: line 3

Insert: "(3) If the United States supreme court invalidates the provisions of federal law that require states to raise the legal age for purchasing and possessing alcoholic beverages to 21 as a condition of full receipt of federal highway funds, the governor of Montana shall immediately certify the fact of the invalidation to the secretary of state of Montana. Sections 11 through 16 are effective upon certification."

Passed

AMENDMENTS TO HB 21, INTRODUCED COPY, PROPOSED BY REP. DAVE BROWN

1. Pages 1 through 5.

Strike: "July"

Insert: "April"

In the following places:

Page 1, lines 20 and 24

Page 2, lines 13, 17, and 23

Page 3, lines 3 and 10

Page 4, lines 2 and 15

Page 5, line 9

2. Page 12, line 1.

~~Following: "5"~~

~~Insert: "and this section"~~

Strike: "July"

Insert: "April"

3. Page 12, line 2.

~~Following: "and"~~

~~Insert: "except for this section."~~

Strike: "July"

Insert: "April"

4. Page 12, line 3.

Strike: "July"

Insert: "April"

EXHIBIT F
DATE 1-9-87
HB # 37

Passed

AMENDMENTS TO HB 37, INTRODUCED COPY, PROPOSED BY REP. GIACOMETTO

1. Page 1, line 18.

Strike: "clerk of the"

2. Page 1, line 20.

Following: "record."

Insert: "The order must adequately identify the defendant, such as by sex, race, date of birth, and the current status of the charges to be expunged."

AHB 37a/5H/5H1

WITNESS STATEMENT

NAME R. Scott Ross BILL NO. 47
ADDRESS Box 5221; Helena 59604 DATE 1/9/87
WHOM DO YOU REPRESENT? Coalition for Stream Access
SUPPORT HB42 (CORB) OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

VISITOR'S REGISTER

JUDICIARY

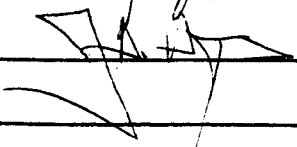
COMMITTEE

AGENCY(S) _____

DATE January 9, 1987

DEPARTMENT _____

PLEASE PRINT.....

NAME	REPRESENTING	SUP- PORT	OP- POSE
R. Scott Ross	Coalition for Stream Access	HB42	
Key Person			
	W.H. Mag Isa	HB37	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT.
IF YOU HAVE WRITTEN COMMENTS, PLEASE GIVE A COPY TO THE SECRETARY.