

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

February 16, 1987

The meeting of the Judiciary Committee was called to order by Chairman Earl Lory on February 16, 1987, at 7:00 a.m. in Room 312 D of the State Capitol.

ROLL CALL: All members were present with the exception of Reps. Brown and Meyers who were absent and Rep. Eudaily who was excused.

EXECUTIVE SESSION:

ACTION ON HOUSE BILL NO. 720:

Rep. Addy moved that HB 720, DO PASS. Rep. Addy moved to amend HB 720 by inserting "10". Rep. Daily moved a substitute motion to strike "50" and insert "25". Question was called, a voice vote was taken. The motion CARRIED 14-1 with Rep. Rapp-Svrcek dissenting. (See Amendments Attached). Rep. Daily moved that HB 720 DO PASS As Amended. Question was called and a voice vote was taken. The motion CARRIED unanimously. HB 720 DO PASS AS AMENDED.

ACTION ON HOUSE BILL NO. 715:

Rep. Daily moved to table HB 715. A voice vote was taken and the motion CARRIED 9-5. HB 715, TABLED.

ACTION ON HOUSE BILL NO. 679:

Rep. Addy moved that HB 679, DO PASS. Question was called and a voice vote was taken. The motion CARRIED unanimously. HB 679, DO PASS.

ACTION ON HOUSE BILL NO. 664:

Rep. Gould moved that HB 664, DO PASS. Question was called and a voice vote was taken. The motion CARRIED 14-1 with Rep. Cobb dissenting. HB 664, DO PASS.

ACTION ON HOUSE BILL NO. 655:

Rep. Addy moved that HB 655, DO PASS. Rep. Addy moved to amend by striking the language "shall" and inserting "may".

Rep. Bulger stated that he is unclear about the bill and moved to table it. A voice vote was taken and the motion CARRIED 7-6. HB 655, TABLED.

ACTION ON HOUSE BILL NO. 598:

Rep. Strizich moved that HB 598, DO PASS. Rep. Strizich moved amendments but after discussion withdrew his motion. Question was called and a voice vote was taken. The motion CARRIED unanimously. HB 598, DO PASS.

ACTION ON HOUSE BILL NO. 590:

Rep. Strizich moved DO PASS. Question was called and a voice vote was taken. The motion CARRIED unanimously. HB 590 DO PASS.

ACTION ON HOUSE BILL NO. 558;

Rep. Gould moved that HB 558, DO PASS. He moved amendments and requested that Mr. MacMaster clarify them. Question was called and a voice vote was taken. The motion CARRIED unanimously. (See Amendments Attached). Rep. Gould moved that HB 558 DO PASS AS AMENDED. Question was called and a voice vote was taken. The motion CARRIED unanimously. HB 558, DO PASS AS AMENDED.

ACTION ON HOUSE BILL NO. 509:

Rep. Darko moved that HB 509, DO PASS. Rep. Bulger moved amendments. Question was called and a voice vote was taken. The motion CARRIED unanimously. (See Amendments Attached). Rep. Darko moved that HB 509 DO PASS AS AMENDED. Question was called and a voice vote was taken. The motion CARRIED unanimously. HB 509 DO PASS AS AMENDED.

ACTION ON HOUSE BILL NO. 715:

Rep. Daily moved that HB 715 be tabled. Question was called and a voice vote was taken. The motion CARRIED 9-5. HB 715, TABLED.

HOUSE BILL NO. 127, Rep. Swift, District No. 64, stated that this act eliminates joint liability and the right to contribution among multiple tortfeasors in civil suits for death or injury to person or property resulting from negligence.

PROPOSERS:

JIM ROBISCHON, Montana Liability Coalition, supported this legislation.

ROBERT HELDING, Montana Association of Realtors, also went on record in support of this bill.

JIM NUGENT, City of Missoula, stated that the Montana League of Cities and Towns, are in support of this legislation. He stated further that the legal precept of joint and several liability can hold a party in a lawsuit responsible for all damages, no matter how small the degree of negligence. Montana's joint and several liability law set forth in Section 27-1-703, MCA is a law that concerns Montana's city and town officials. He submitted written testimony. (Exhibit A).

RALPH YAEGER, Economic Development Council, urged support for HB 127.

OPPONENTS:

KARL ENGLAND, Montana Trial Lawyer Association, went on record in opposition to this bill.

There were no further opponents and no questions.

Rep. Swift closed the hearing on HB 127 by stating that the cities and towns should only be responsible for their own degree of liability.

HOUSE BILL NO. 351, Rep. Swift, District No. 64, sponsor, stated that this bill restricts the amount of attorney fees under contingency fee agreements. HB 351 sets up a limit in contingency fee cases of \$200,000.00 for an individual lawyer involved and a maximum of \$400,000.00 if one or more lawyers are involved in the case. He presented as (Exhibit A) a handout from the Montana Lawyer, June 1986.

See Visitors' Register for further proponents.

OPPONENTS:

PAT MELBY, State Bar of Montana, stated that the State Bar is opposed to any attempt to regulate ability of client and attorney to contract. He recommended a do not pass.

KARL ENGLAND, Montana Trial Lawyers Association, gave a case that an attorney in his office has been working on for two years and at the present date is only half finished. He stated that there are many cases that the time involved is substantial and the limits in this bill are simply not realistic.

QUESTIONS (or Discussion) ON HOUSE BILL NO. 351:

Rep. Daily asked Rep. Swift if the handout material reflects take home pay or net pay. He stated that he is not at liberty to say.

Rep. Swift closed the hearing on HB 351 by stating that the thrust of this bill is not to award anyone an amount that they are not capable of earning.

HOUSE BILL NO. 509, Rep. Schye, District No. 18, stated that this bill prohibits the operation of an aircraft by a person under the influence of alcohol or drugs, providing blood alcohol standards. He submitted a letter from Jim Burnett, Chairman of the National Transportation Safety Board, (Exhibit A), who stated that the threat of alcohol and drug abuse to aviation safety is a matter of deep concern to the NTSB. As the federal agency designated by Congress to investigate aviation accidents, we have seen the tragic consequences of alcohol and drug use by pilots in many accidents. He stated that this measure addresses the shortcomings in the Federal/State enforcement system and by enacting this statute, Montana will make it clear that alcohol and drug impaired pilots have no place in this state.

PROPOSERS:

MICHAEL D. FERGUSON, State of Montana, Department of Commerce, Aeronautics Division, presented amendments to HB 509 and explained them. (Exhibit B). He stated that this bill is in response to the National Transportation Safety Board and the FAA's request to address this shortcoming in Montana statutes, thus making enforcement of the Federal Air Regulation nearly impossible in Montana and nine other states. He urged support.

ARTHUR L. WELLS, Clancy, stated that present regulations that incorporate these changes also provide that the FAA would be furnished upon request a copy of any testing of alcohol and drugs. He further stated that he is speaking on behalf of the FAA and he urged passage for HB 509.

DAVE BLACKMAN, Lobbyist for the Montana Public Health Association and the American Public Health Association in Montana, testified in favor of this legislation on the books. He stated that this bill is very necessary and urged support.

There were no further proponents, no opponents or questions.

Rep. Schye closed the hearing on HB 509 by stating that Montana has more pilots and airplanes per capita than any other state with the exception of Alaska. He said, when we

are talking about public safety, it only takes one person to cause a problem and this is a very essential piece of legislation.

HOUSE BILL NO. 546, Rep. Fritz, District No. 56, stated that this bill makes it easier to convict drunken drivers by inserting the presumption of absolute liability. He stated that a necessary amendment has been made to the bill on page 3, lines 6-7, the phrase, "such presumption is rebuttable", was mistakenly eliminated from current law and it was a drafting error. What is being removed from the bill is that the driver did not know that he was too drunk to drive, he said. A condition for punishment is a fine not exceeding \$500.00 and a legislative purpose to impose absolute liability. He pointed out that he was asked to carry this bill by the Department of Justice.

PROPOSERS:

DAVE BLACKMAN, Lobbyist for the Montana Public Health Association, he urged support for the passage of this amendment because it will close one of the loop holes for defense.

JIM NUGENT, City of Missoula, League of Cities and Towns, went on record in support of this amendment.

There were no further proposers and no opponents.

QUESTIONS (or Discussion) ON HOUSE BILL 546:

Rep. Rapp-Svrcek asked Mr. MacMaster, in light of Rep. Gould's bill, is this bill necessary. He stated Rep. Gould's bill is a different section of the law.

Rep. Fritz closed the hearing on HB 546 by stating that absolute liability offenses are offenses for which the state does not have to prove a mental state to obtain a conviction. The bill imposes absolute liability on DUI in order to remove this loophole in the law.

HOUSE BILL NO. 548, Rep. Simon, District No. 91, stated that this act requires a governmental entity contemplating a project involving private land to notify the affected landowner prior to publicly disclosing the project. He pointed out that at least 30 days notice should be given to the landowner.

PROPOSERS:

M. JEANNE WHITE, Billings, stated that the threat of condemnation of private property is a major problem to anyone who

owns land downtown. In the last ten years, the city and the county has had several plans for her property but not once was she contacted about any of these intentions. She stated that she sees these proposals in the morning newspapers, and on television, and radio. She hopes that the state and local government will be made to realize that their procedures must change and that property owners and tenants must be informed before they can incorporate private property into their concepts. She submitted written testimony. (Exhibit A). Also, submitted by Ms. White was a statement of support by David J. Krueger, President, First Federal Savings of Billings. (Exhibit B). A letter by Carol B. Morrison of Two Valleys Realty, Inc., Billings was submitted as (Exhibit C). Gene Rockman Interiors, Billings, asked Ms. White to present a letter in support of HB 548. (Exhibit D).

See Visitors' Register for further proponents.

OPPONENTS:

JIM BECK, Department of Highways, stated that the planning and designing process of the major reconstruction of a highway takes between five and seven years lead time and some of the lead time is spent in scoping the project and in some instances it is necessary to repair entire legal documents and these documents are made public. He also pointed out that there are design and location hearings that are held in the area of the project. He explained that it is often hard to determine exactly whose land will be taken. In addition, there are various highway projects that are made by entities other than the Highway Department. He further stated that it would be difficult to notify landowners.

QUESTIONS (or Discussion) ON HOUSE BILL NO. 548:

Rep. Addy asked Rep. Simon what part of the code this is intended to be incorporated into. Rep. Simon stated that he did not know.

Rep. Addy asked Ms. White if instead of requiring the Department of Highways to let you know before they make a public announcement maybe we should lengthen a time period for condemnation. Tenants are constantly questioning what is happening and this makes the landowners very upset as well as the tenants.

Rep. Addy asked Mr. Beck to respond to the same question. He stated that landowners do have a legal recourse to dispute.

Rep. Simon closed the hearing on HB 548 by stating that this bill only asks for a decent courtesy to be extended to landowners.

HOUSE BILL NO. 590, Rep. Strizich, District No. 41, stated that this bill is brought to us on behalf of the Sheriff's Office. It amends current law to include city and county jails under the provision for making it a crime for prisoners to possess weapons in a jail. A prisoner who purposely or knowingly possesses or carries upon his person or has under his custody or control without lawful authority a dirk, dagger, pistol, revolver, slingshot, sword cane, billy, knuckles made of any metal or hard substance, knife, razor not including a safety razor, or other deadly weapon is guilty of a felony.

PROPOSERS:

BARRY MICHELOTTI, Sheriff of Cascade County, stated that the purpose of this bill is that currently there is no law or deterrents for inmates to possess a deadly weapon. He strongly supported this legislation.

There were no further proposers and no opponents.

Rep. Strizich closed the hearing on HB 590.

HOUSE BILL NO. 605, Rep. Jan Brown, District No. 46, stated that this bill was requested by the Department of Social and Rehabilitation Services, and it is a general revision of the confidentiality statutes. It is difficult for the Department to provide necessary information for protective services to the family. She pointed out that many county attorneys and social workers have requested a change in the existing statutes to allow for greater disclosure. She presented as (Exhibit A) 45 CFR Chapter XIII (10-1-85), office of Human Development Services, HHS.

PROPOSERS:

BOBBIE JEAN CURTIS, Montana State Foster Parent, President, stated that this is a very important bill. Foster parents need to have certain information about a child they are taking into their homes so that family members can be informed and alerted to potential problems.

MARY OLSON, Foster Parent, Helena, stated that foster parents and other children in families need to be able to protect themselves from violation and this bill will help them do so. She urged support.

NORMA HARRIS, Department of Social and Rehabilitation Services, pointed out that the Department responds to all cases of child abuse and neglect. Last year over 3,000 cases of child abuse were validated. She stated that it is necessary and important for the Department to use all resources available efficiently. This bill would help the program run in an efficient manner for the best interest of the children and the foster parent program.

CHERYL LINDSAY, Foster Parent, Helena, went on record in support of this legislation.

STEVE WALDRON, Montana Mental Health Centers, pointed out that information is needed to do a good job.

There were no further proponents and no opponents.

QUESTION (or Discussion) ON HOUSE BILL NO. 605:

Rep. Addy asked Rep. Brown about a clerical problem on page 3, line 2, where there is a blank. She acknowledged that there is a clerical error on the line.

Rep. Addy stated that it appears that this bill is opening up this area entirely and it is making it very broad. Rep. Brown stated that it is broad and asked Ms. Harris to please respond to this question. Ms. Harris stated that presently information cannot be given to foster parents and what is listed in this bill does give a balance.

Rep. Brown closed the hearing on House Bill 605.

HOUSE BILL NO. 655, Rep. Addy, District No. 94, sponsor, stated that this act provides for appeals from justices' and city courts to District Courts on the record, providing for audio transcripts of city and justice court proceedings. It establishes a standard of review for District Court appellate decisions to be appealed under a writ of certiorari.

There were no proponents to House Bill 605.

OPPONENTS:

JIM HAYNES, Montana Magistrates Association, stated that HB 655 attempts to address the problem of hearing a "small" case two times before two separate levels of judges or juries. The Montana Magistrates Association is unaware of this as a widespread problem. He pointed out that adequate mechanisms now exist such as small claim courts that work as courts of record to address just this problem. Municipal courts in cities over 10,000 population are authorized as courts of record. He stated that they oppose this bill as

attempting overly broad court reform without sufficient study and he submitted written testimony. (Exhibit A).

REP. GIACOMETTO, went on record in opposition to this legislation.

There were no further opponents and no questions.

Rep. Addy closed the hearing on HB 655 by stating that many judges want the review of their opinions to be limited at the District Court level and the system will take care of itself at the point.

HOUSE BILL NO. 664, Rep. Ramirez, District No. 87, pointed out that this bill simply coordinates the present law on joint and several liability in the event that SB 51 or HB 127 should pass the House.

PROPOSERS:

JIM ROBISCHON, Montana Liability Coalition, stated that the Coalition was active with the Legislative Council in preparation of this bill and appears in support of this legislation.

See Visitors' Register for further proposers.

There were no opponents and no questions.

Rep. Ramirez closed the hearing on House Bill 664.

HOUSE BILL NO. 679, Rep. Keenan, District No. 66, stated that this is a simple bill allocating 50 percent of the revenue from fines for the offensive domestic abuse to the battered spouses and domestic violence grant program. She stated that presently there is not an accurate accounting system as to where the fines go. Basically it is currently up to the counties where the fines will go. This bill proposes that half the fines will come back to the state for distribution into the shelter programs.

PROPOSERS:

CARYL WICKES BORCHERS, Executive Director of the Great Falls Mercy Home, Montana State Task Force on Spouse Abuse and representing the Montana Coalition Against Domestic Violence, stated that due to economic conditions and high unemployment (a triggering event for domestic violence) there is a tremendous increase in client loads but with the portion of the Domestic Abuse Fines we will continue to stretch every penny to benefit the entire State of Montana. She presented written testimony. (Exhibit A).

BOYCE D. FOWLER, Domestic Violence Program Manager, stated that through the change in diverting part of the mandatory arrest fines to the Domestic Abuse Program, the effect would be to strengthen and maintain the local community programs otherwise not possible. Written testimony was submitted as (Exhibit B).

CONCERNED CITIZEN, submitted written testimony. (Exhibit C). She urged support for HB 679 for people that need a place to be safe. Mercy Home provides women and children with a place to put their lives back together.

DEBRA JONES, Women's Lobbyist Fund, pointed out that the best and most appropriate place to use the money from domestic violence arrest fines is on local spouse abuse programs and shelters. She pointed out that for many battered women and their families, emergency shelters are their only way out. These programs and shelter have made a very real and significant contribution to Montana, she said. WLF urged a do pass recommendation on this bill and submitted written testimony. (Exhibit D).

CAROL BULLARD, Great Falls, testified that she is one of many women who have been abused and she pointed out that Great Falls is fortunate to have the Mercy Home because it is a means of getting away from the abusive situation. She asked how long can the Mercy Home survive without funding and urged that this legislation be passed. Written testimony was submitted. (Exhibit E).

LENORE F. TALIAFERRO, Helena, stated that perpetrators of the crime of spouse abuse must be made to pay all costs incurred. Written testimony was submitted as (Exhibit F).

JULIE H. HIGUM, pointed out that by supporting funding for domestic abuse programs, you not only help one person, but generations to come, by showing them that battering is learned behavior. HB 679 will help children learn what love is. She presented written testimony. (Exhibit G).

DEB KIMMET, Domestic Violence Expert, Director of the Battered Women's Network, Bozeman, stated that with this crime entire families must be treated, not just the victim. This bill provides that the people doing the battering will pay the fine. She strongly urged support for this legislation and submitted written testimony as (Exhibit H) and an information sheet as (Exhibit I).

There were no opponents.

QUESTIONS (or Discussion) ON HOUSE BILL NO. 679:

Rep. Gould asked Ms. Kimmit if there are any statistics on how many times the average woman comes back to battered women's shelter. She stated that a woman will often leave such a situation four to seven times before she decides to break free of that relationship.

Rep. Keenan closed the hearing on HB 679.

HOUSE BILL NO. 715, Rep. Cobb, District No. 42, stated that this is an act to remove mines, mills and smelters for the reduction of ores from the eminent domain laws and the definition of public uses. He pointed out that the law has been on the books since the late 1800's and this bill deals with private use whereas most eminent domain laws affect public use.

There were no proponents to this bill.

OPPONENTS:

WARD SHANAHAN, Chevron Corporation, stated that this bill is not needed.

JOHN FITZPATRICK, PEGASUS GOLD CORPORATION, opposed this legislation because minerals are where you find them. He presented a handout titled, "The Montana Tunnels Project". (Exhibit A). He submitted written testimony. (Exhibit B).

GARY A. LANGLEY, Montana Mining Association, Executive Director, pointed out that most mining companies that come to Montana are prepared to spend millions of dollars in order to build a mine that will provide hundreds of well paying jobs. Montana has the most strict environmental regulations in the country. As a result of some of those regulations the mining company does not have complete control over where they place their facilities. This bill allows a single person (perhaps a person who does not like mining) to halt a multimillion dollar investment.

T. M. ROLLINS, Troy, ASARCO, INC., stated that he rises in opposition to HB 715 for the same reasons the other opponents oppose this legislation. To remove the protection afforded by the eminent domain law from the future developers of our mineral resources is unjust, he said. He urged a do not pass recommendation and submitted written testimony. (Exhibit C).

QUESTIONS (or Discussion) ON HOUSE BILL NO. 715:

Rep. Addy asked Rep. Cobb why he was running businesses out of the state of Montana and Rep. Cobb stated that he did not realize he was doing that. The concept of eminent domain is

the taking of lands for the use of public and mines are taking land for their own use first.

Rep. Bulger asked Rep. Cobb if he knows what the situation of the law is in other mining states and Rep. Cobb stated that the law is eminent domain.

Rep. Addy asked Rep. Cobb what he thought of charging a fee to rent the land for the use of eminent domain and Rep. Cobb stated that that would be all right with him. Rep. Addy asked Mr. Shanahan the same question and he pointed out that it would be all right as long as it was made non discriminatory. He further stated that if the farmers are charged for the right of the road, the same rent, then the mining companies would go along with that.

Rep. Cobb closed the hearing on HB 715.

HOUSE BILL NO. 720, Rep. Spaeth, District No. 84, stated that basically this adopts the close corporation act in the state of Montana and allows small business, family run companies, ranches and farms the opportunity to incorporate.

PROPOSERS:

STEVEN C. BAHL, Assistant professor of the University of Montana School of Law, stated that prior to his moving to Montana, he practiced law for six years in the State of Wisconsin, which has adopted an act nearly identical to that of HB 720. Small businesses have had a good experience with it. He urged support for this legislation and presented written testimony. (Exhibit A).

AMY GUTH, and MARCIE QUIST, Missoula Law School, submitted information on the Montana Closely Held Corporation Act and explained each section. (Exhibit B).

DON INGELS, Montana Chamber of Commerce, went on record in support of this legislation.

There were no opponents.

Rep. Spaeth closed the hearing on HB 720 by stating that this is a good bill and he urged support for it.

ADJOURNMENT: There being no further business to come before this committee, the hearing was adjourned at 12:42 p.m.



EARL LORY, Chairman

DAILY ROLL CALL

JUDICIARY

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Feb. 16, 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

February 16, 19 87

Mr. Speaker: We, the committee on JUDICIARY

report HOUSE BILL NO. 599

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☒ as amended
☐ statement of intent attached

Chairman

1. Page 1, line 22.

Strike: "commerce"

Insert: "transportation"

2. Page 3, line 3.

Following: "operate"

Insert: ", attempt to operate,"

3. Page 3, line 5.

Following: "drugs."

Insert: "'Under the influence" means that as a result of taking into the body alcohol, drugs, or any combination thereof, a person's ability to safely operate the aircraft has been diminished to the slightest degree."

4. Page 3, line 8.

Strike: "Pursuant to 14 C.F.R. 91.11, if"


Insert: "if"

5. Page 4, line 7.

Following: "in"

Insert: "61-8-402 and"

AHB509a/JM/JM2


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STANDING COMMITTEE REPORT

FEBRUARY 16, 19 37

Mr. Speaker: We, the committee on JUDICIARY

report HOUSE BILL NO. 720

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☒ as amended
☐ statement of intent attached

Chairman

Page 2, line 6.

Strike: "50"

Insert: "25"

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STANDING COMMITTEE REPORT

February 16,

19 37

Mr. Speaker: We, the committee on JUDICIARY

report HOUSE BILL NO. 679

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☐ as amended
☐ statement of intent attached

Chairman

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STANDING COMMITTEE REPORT

February 16

19 37

JUDICIARY

Mr. Speaker: We, the committee on
report **HOUSE BILL NO. 664**

xx

☐ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☐ as amended
☐ statement of intent attached

Chairman

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STANDING COMMITTEE REPORT

February 16, 19 97

Mr. Speaker: We, the committee on JUDICIARY

report HOUSE BILL NO. 590

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☐ as amended
☐ statement of intent attached

Chairman

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STANDING COMMITTEE REPORT

February 16, 19 87

Mr. Speaker: We, the committee on JUDICIARY

report HOUSE BILL NO. 598

☒ do pass

☐ be concurred in

☐ as amended

☐ do not pass

☐ be not concurred in

☐ statement of intent attached

Chairman


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STANDING COMMITTEE REPORT

2-16-87

19

JUDICIARY

Mr. Speaker: We, the committee on

HOUSE BILL 553

report

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☒ as amended
☐ statement of intent attached

Chairman

3) Page 1, lines 16 through 19.

Strike: "if" on line 16 through "An" on line 19

Insert: "and an"

2) Page 1, line 22.

Following: "offense"

Insert: "unless the defendant proves that he did not know that it was an intoxicating substance when he consumed, smoked, sniffed, injected, or otherwise ingested the substance causing the condition"

ANB553a/JM/JM2


210

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OFFICE OF THE CITY ATTORNEY

201 W. SPRUCE • MISSOULA, MT 59802-4297 • (406) 721-4700

DATE 3-16-87

127

January 19, 1987

87-041

Representative Bernie Swift
House of Representatives
Montana State Capitol
Helena, Montana 59620

Representative Earl Lory
Chairman, House Judiciary
Committee
Montana State Capitol
Helena, Montana 59620

Re: Support for House Bill 127 eliminating joint liability

Dear Representatives Swift and Lory:

The purpose of this letter is to express the support of the Montana League of Cities and Towns, as well as the City of Missoula, for House Bill 127 eliminating the joint liability provisions of Montana state law which is currently set forth in Section 27-1-703, M.C.A., entitled "Municipal defendants jointly and severally liable --- right of contribution."

The legal precept of joint and several liability can hold a party in a lawsuit responsible for all damages, no matter how small the degree of negligence. Montana's joint and several liability law set forth in Section 27-1-703, M.C.A. is a law that concerns Montana's city and town officials.

Pursuant to Montana's joint and several liability law, each party against whom recovery may be allowed is jointly and severally liable for the amount that may be awarded. This means that, if for any reason all or part of the monetary contribution from a party liable for contribution to a judgment cannot be obtained, each of the other party defendants against whom recovery is allowed is liable or required to contribute a proportional part of the unpaid portion of the non-contributing party's share to the monetary judgment.

Thus, the legal doctrine of joint and several liability potentially can hold a party in a lawsuit financially responsible for all damages, no matter how small the degree of negligence attributable to that party defendant. Government entities are often named as defendants to lawsuits as a result of a perception by plaintiffs and/or plaintiffs' attorneys that the government has unlimited resources or "deep pockets." The Montana statutory doctrine of joint and several liability potentially could make a government entity financially responsible for an entire judgment, even though the government entity might have been found by a jury to only be 5%, 10% or 20%, etc. negligent.

Examples of types of factual circumstances wherein a city could be joined as a defendant in a lawsuit and could experience the ramifications of Montana's joint and several liability law include, but are not limited to:

Representative Bernie Swift
Representative Earl Lory
January 19, 1987
Page Two

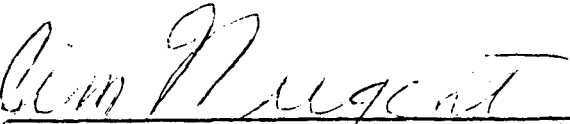
HB 1127
HB 127
EXHIBIT
DATE
HB

1. Traffic visibility obstructions on private property at intersections; i.e., hedges, bushes, trees, shrubs, fences, etc.;
2. Slip (or trip) and fall cases on sidewalks that have not had snow or ice cleaned off or are cracked, uneven or otherwise in need of repair;
3. Pot holes in streets;
4. Absence of traffic signage, guardrails, etc.;
5. Uniform Building Code inspections, especially when the builder is either now departed from the community and/or the builder's business entity no longer exists and the builder did not comply with the provisions of the Uniform Building Code; and
6. Uniform Fire Code inspections where the building owner or tenant covers up Uniform Fire Code violations or makes changes after an inspection.

Once again, this is an example of a current State law that could be financially inequitable and detrimental to a city or town's financial operation. Therefore, Montana League of Cities and Towns officials and City of Missoula officials would urge the enactment of HB-127.

Thank you.

Yours truly,



Jim Nugent, City Attorney and
President, Montana League of Cities and Towns

JN:mbs

cc: Alec Hansen, Montana League of Cities & Towns Executive Director; Missoula County Representatives Ralph Eudaily, Harry Fritz, R. Budd Gould, Stella Jean Hansen, Mike Kadas, Janet Moore, Bob Ream and Carolyn Squires

RESULTS OF SURVEY ON JUDICIAL SALARIES

A survey on judicial salaries was conducted in February 1986. A total of 848 members of the State Bar of Montana responded to the survey. Results of the survey were tabulated by Econoconsult Inc., Butte.

The State Bar's Committee on the Status, Selection and Compensation of Judges in Montana has written a report using statistics compiled from the survey. In its introduction to the report, the Committee commented that the Justices of the Montana Supreme Court are the lowest paid state Supreme Court Justices in the United States, and that Montana's District Court Judges rank 48th in compensation out of the 50 states.

In analyzing judicial compensation of Montana judges, the Committee included a comparison of judicial salaries to the income of Montana attorneys of an age and experience level that should form the nucleus of Montana's future judges. The statistics on average annual income for attorneys by age and by years of practice are as follows:

1985 AVERAGE ANNUAL INCOME FOR ATTORNEYS IN MONTANA BY AGE

AGE	NUMBER	% OF TOTAL	MEAN INCOME	MEDIAN INCOME	RANGE
25-30	109	12.85	\$34,344.56	\$24,000.00	\$4,000 - \$1,000,000
31-35	225	26.53	38,770.33	31,100.00	2,000 - 137,000
36-40	214	25.28	53,224.55	41,000.00	6,000 - 502,000
41-45	102	12.03	57,042.97	46,000.00	1,700 - 194,000
46-50	50	5.90	69,587.94	62,000.00	16,000 - 130,000
51-55	43	5.07	84,567.90	64,000.00	22,000 - 180,000
56-60	45	5.31	72,435.24	55,500.00	3,000 - 175,000
61-65	36	4.25	78,634.08	60,000.00	7,500 - 450,000
66-70	17	2.00	48,292.00	38,000.00	7,320 - 115,000
70 and Above	7	.83	58,428.57	45,000.00	9,000 - 135,000
TOTAL	848	100	52,232.57	40,723.85	

Montana
Attorney
Economic
Base
#100/H

1985 ANNUAL INCOME FOR ATTORNEYS IN MONTANA BY YEARS OF PRACTICE

YEARS ADMITTED TO A BAR	NUMBER	% OF TOTAL	MEAN INCOME	MEDIAN INCOME
0-4	197	23.23	\$24,154.72	\$23,750.00
5-9	232	27.36	46,235.60	34,500.00
10-14	163	19.22	59,611.00	47,000.00
15-19	75	8.84	70,053.41	55,000.00
20-29	85	10.50	79,806.53	70,000.00
30-39	75	8.84	76,874.28	60,000.00
40 or More	17	2.00	46,318.82	40,000.00



National Transportation Safety Board

Washington, D.C. 20594

February 13, 1987

Office of the Chairman

EXHIBIT A
DATE 2-16-87
HB # 509

Honorable Earl Lory
Chairman, Judiciary Committee
State House of Representatives
Capitol Building
Helena, Montana 59620

Dear Chairman Lory:

The threat of alcohol and drug abuse to aviation safety is a matter of deep concern to the National Transportation Safety Board. As the federal agency designated by Congress to investigate aviation accidents, we have seen the tragic consequences of alcohol and drug use by pilots in many accidents.

Safety Board records show that in 1984 there were 38 aviation accidents involving alcohol use by the pilot-in-command in which 40 occupants died and 35 were injured. Preliminary analysis of 1985 accidents indicates 35 alcohol-involved accidents which killed 41 occupants and injured 22. Our examination of aviation accidents from 1975 to 1984 indicates nearly 10 percent of fatally-injured pilots tested were found to have alcohol in their bodies at the time of crash. But more than the mere presence of alcohol was found. After a thorough investigation by the Safety Board of these accidents, the Board officially judged the pilot's use of alcohol to be a cause or factor in those accidents.

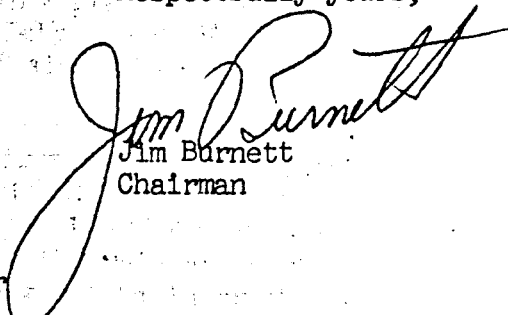
Let me also point out that these figures are, most certainly, underestimates of the true level of alcohol involvement in aviation accidents. Approximately 20 percent of fatally-injured pilots do not receive any toxicology tests. But for surviving pilots the data are much more incomplete -- only one-half of one percent of surviving pilots in crashes are tested for the presence of alcohol. The data on drug involvement is even worse. Until recently, the Federal Aviation Administration (FAA) almost never tested even fatally-injured pilots for drugs other than alcohol.

Almost all of the alcohol-related aviation accidents we have investigated involve general aviation rather than commercial flying. But even though most of these accidents do not involve alcohol-impaired pilots carrying dozens of passengers, their threat to other aircraft and to all those on the ground is very real indeed. One accident we investigated in Georgia recently involved a pilot who had been drinking. He took off carrying his 5-year-old daughter and decided to "buzz" her grandparents' house so she could wave to them. Fortunately, he missed their house -- but crashed a short distance beyond. We found later that he had forgotten to fuel his aircraft. His reckless actions cost him his own life and his young daughter's.

The public assumes that the FAA has the rules and the means to protect them from alcohol- and drug-impaired pilots. Federal Aviation Regulations (14 CFR 91.11) do prohibit the operation or the attempt to operate an aircraft while under the influence of alcohol or drugs. Consumption of alcoholic beverages within 8 hours before flight is prohibited. Flying with a blood alcohol concentration of 0.04 percent or more is illegal. But -- and it is a big "but" in our view -- the enforcement of these regulations depends on every State having the legal authority to arrest and test a pilot suspected of "flying while intoxicated" in order to trigger the FAA's review and enforcement process. The problem is that not all States have "flying while intoxicated" statutes. Ten, including Montana, do not. While it is the Safety Board's position that no measurable alcohol in the blood should be allowed, only eight States set a blood alcohol limit at all (two at the FAA's 0.04 percent, two at 0.05 percent, and four at 0.10 percent). As few as four States have specific "implied consent" authority to demand an alcohol test from pilots as virtually all States do with suspected drunk drivers.

The measure before the Judiciary Committee today addresses the shortcomings in the Federal/State enforcement system I have described above. By enacting this statute, Montana will make it clear that alcohol- and drug-impaired pilots have no place in your State -- and you will have the law and the means to prove it.

Respectfully yours,

A large, stylized handwritten signature in dark ink, appearing to read "Jim Burnett". The signature is written over the printed name and title.

Jim Burnett
Chairman

cc: Mr. Michael Ferguson, Administrator
Aeronautics Division
Montana Department of Commerce

DEPARTMENT OF COMMERCE
AERONAUTICS DIVISION

H.B. 509



TED SCHWINDEN, GOVERNOR

P.O. BOX 5178
2630 AIRPORT ROAD

STATE OF MONTANA

(406) 444-2506

HELENA, MONTANA 59604

February 9, 1987

EXHIBIT B

DATE 2-16-87

HB # 509

MEMO TO: Rep. Ted Schye

FROM: Michael D. Ferguson

RE: LC 0789/10 - An Act Prohibiting the Operation of an Aircraft by a Person under the Influence of Alcohol or Drugs

I received a call this date from Denise Daniels, attorney, General Counsel Office of the FAA in Washington, D.C. She has reviewed the above draft and has the following recommended changes:

Page 1, Line 22 - The word "commerce" needs to be changed to transportation.

Page 3, Line 3 - After word "or" add attempt to operate or.

Page 3, Line 8 - Delete "Pursuant to 14 C.F.R. 91.11,"

Page 4, Line 7 - After word "in" add 61-8-402 and.

mk

February 14, 1987

EXHIBIT A
DATE 2-16-87
HB # 548

Mrs. Lonney White
2146 Fairview Place
Billings, Montana

Mr. Chairman and Members:

It is my hope today that I may say something to reinforce what has already been stated in the letters I have given you. The threat of condemnation of private property in Billings is a major problem to anyone who owns land downtown. The White family has owned their downtown property since 1900. It was once the home of my father-in-law as well as my husband. My six children and I now possess this land. Located across the alley to the east of the courthouse, it is a surface parking lot, leased to Diamond Parking.

In the last ten years, the city and county have had several plans for our property. Not once were we ever contacted about any of these intentions. To this date we have never been notified. We either read of these proposals in the morning paper, see them on television, or hear of them on the radio. In the latest incident, the Billings Gazette displayed a complete design of the proposed downtown plaza. Our land was shown as a park to give the people who work in the Courthouse and Federal Building an attractive walk to the plaza. On previous occasions our property has been suggested as a parking garage and a jail. On the particular event when they proposed a combined garage and jail, the project was to be paid for, in part, by a 2.9 million dollar bond issue - which the voters did not pass. That is one example of how close we have come to losing our land and still never being contacted from anyone on the matter.

Our family has hired and paid for three architectural designs over the years to try to protect us from a possible condemnation. We are not that much different from the other land owners. The faces are different - the problems the same. There seems to be no regard for the private property owner. In our case, they tell us that according to their studies our land is not being utilized to it's potential. I would think we should be the ones to decide this!

It is my hope that the state and local government may be made to realize that their procedures must change and that property owners and tenants must be informed before they can incorporate private property into their concepts.

Respectfully

Mrs. Lonney White

Mrs. Lonney White

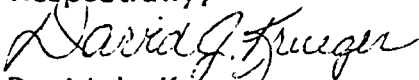
AMOUNT 12
DATE 2-16-87
HS # 548

STATEMENT OF SUPPORT

It is not only appropriate, but right for any governmental body to give advance notice to a private property owner any time the public sector is contemplating the utilization of private property for public purposes.

It is embarrassing and puts one in an awkward position when you find out that plans are being made to utilize your property. Property owners deserve the courtesy of being allowed the right to be the first notified of potential utilization of their property to allow for appropriate time to formulate an appropriate response.

Respectfully,



David J. Krueger

President, First Federal Savings of Billings

DJK:kbb

TWO VALLEYS REALTY, Inc.

Room B-1 Behner Bldg.
2822 Third Avenue North
BILLINGS, MT 59101

EXHIBIT C
DATE 2-16-87
548

FEBRUARY 12, 1987

MRS. JEANNE WHITE
2146 FAIRVIEW
BILLINGS, MONTANA 59102

DEAR MRS. WHITE:

I AM DELIGHTED TO HEAR THAT YOU WILL BE GOING TO HELENA TO ENCOURAGE THE LEGISLATURE TO FAVORABLY CONSIDER AN IMPORTANT PROPOSED BILL. THIS IS THE ONE THAT GIVES PROPERTY OWNERS CONSIDERATION WHEN FACED WITH POSSIBLE CONDEMNATION OF THEIR HOLDINGS BY USE OF EMINENT DOMAIN.

AS THINGS NOW STAND, THERE ARE NO SAFEGUARDS FOR THOSE OWNERS WHO OFTEN DEPEND ON INCOME FROM PROPERTY, OR WHOSE ON-GOING BUSINESS IS HOUSED IN THE LOCATION DESIRED. RENTERS GET SOME PROTECTION IN THIS STATE. WHY NOT OWNERS?

THIS BILL DOES NOT HURT THE POWERS OF EMINENT DOMAIN, BUT IT BRINGS PLANS BEING MADE INTO THE LIGHT OF DAY SO THAT ALL CONCERNED MAY HAVE A SHARE IN INTELLIGENT PLANNING WITH REGARD TO THEIR OWN LIVELIHOOD. IT WOULD SEEM THAT ANY LEGISLATOR WHO IS A PROPERTY OWNER WOULD BE ANXIOUS TO SAFEGUARD RIGHTS - WHO KNOWS WHO MIGHT BE NEXT?

RESPECTFULLY,



CAROL B. MORRISON

THE BILLINGS GAZETTE

C SUNDAY, FEB. 8, 1987

plaza plan will meet with
businesses.

"I don't know," said Gene Rockman, whose property on the southwestern corner of Second Avenue North and North 27th Street anchors the plaza site picked in October by the City Council.

"They (officials) still haven't talked to me. It's just amazing," said Rockman, owner of the building that houses Gene Rockman Interiors and several other firms.

Milt Klungness, who owns the Wine Cellar, 2720 Second Ave. N., said he hasn't received any information on plans for moving his business, despite promises of late October or early November.

"It's simple to describe — total neglect," said Klungness. His business, along with Company D Gourmet Foods and Dain Bosworth, uses space leased from John Bohlinger.

Still, Klungness said, McKernan met with Frank Kelley, general manager of Dain Bosworth, about two weeks ago to discuss the possibility of moving Dain Bosworth about a block south of its present location.

Kelley, however, said on Friday that general information about the plaza was discussed at the meeting. "We didn't talk about moving our offices one block south," he said.

Bohlinger was unavailable for comment. Dan Skie, Company D owner, said he is worried that the city's relocation policy won't cover expenses for advertising his new location, lost income during the move and the cost of new store fixtures.

Permissible city dealings with tenants may become clearer if the City Council approves a proposed relocation policy Monday night.



residential and commercial planning
2704 second avenue north
billings, montana 59101
406-252-2741

EXHIBIT 1
DATE 2-16-87
LR # 548

February 13, 1987

Legislators:

I would like to express a great deal of concern about the City of Billings and it's inconsistent approach to the acquisition of land without the consideration, opinions and needs of the land owners themselves. For the last several months, alot of attention has been given to several parcels of property within the downtown area for a proposed mall or "activity center". After several concepts submitted by a Denver design team, my corner was finally accepted by the Billings City Council as the number 1 choice for this mall or plaza. My land is located at the corner of North 27th and 2nd Avenue North and is considered the key piece of property for this downtown project. As the owner of this land, I have no problem with their decision concerning the choice of location. The part that does concern me is the fact that they have incorporated my land "private property" within the total design of the plaza without a verbal or written approval from me concerning the selection and use of this land. This is totally irresponsible on the part of the City of Billings and in the people involved.

The above property houses my own business together with several other businesses. As a result of the city's actions and statements, my tenants feel that I have not been totally fair and open with them concerning their future and the city's proposal. Many of my own clients are questioning my ability to perform services in the same manner which I have offered to them for the past 20 years because of condemnation rumors and the possibility of a long legal battle.

I understand eminent domain and the right of a state or city to take private property, I also know under the provisions of eminent domain, it states "where land is required it must be taken with least private injury". This is a clear cut case of personal injury involving tenants and one's own livelihood.

I would like you to consider a bill to limit the authority given to local officials in announcing the plans for any piece of property privately owned, prior to receiving consent from the actual owners. I am not opposed to progress or development in Billings but feel that the people in charge have lost their sense of responsibility to the people they serve.

Respectfully,

Eugene H. Rockman

guage identical to that used in § 1340.2, as long as the definition used in the State is the same in substance.

(c) *Reporting.* The State must provide by statute that specified persons must report and by statute or administrative procedure that all other persons are permitted to report known and suspected instances of child abuse and neglect to a child protective agency or other properly constituted authority.

(d) *Investigations.* The State must provide for the prompt initiation of an appropriate investigation by a child protective agency or other properly constituted authority to substantiate the accuracy of all reports of known or suspected child abuse or neglect. This investigation may include the use of reporting hotlines, contact with central registers, field investigations and interviews, home visits, consultation with other agencies, medical examinations, psychological and social evaluations, and reviews by multidisciplinary teams.

(e) *Institutional child abuse and neglect.* The State must have a statute or administrative procedure requiring that when a report of known or suspected child abuse or neglect involves the acts or omissions of the agency, institution, or facility to which the report would ordinarily be made, a different properly constituted authority must receive and investigate the report and take appropriate protective and corrective action.

(f) *Emergency services.* If an investigation of a report reveals that the reported child or any other child under the same care is in need of immediate protection, the State must provide emergency services to protect the child's health and welfare. These services may include emergency caretaker or homemaker services; emergency shelter care or medical services; review by a multidisciplinary team; and, if appropriate, criminal or civil court action to protect the child, to help the parents or guardians in their responsibilities and, if necessary, to remove the child from a dangerous situation.

(g) *Guardian ad litem.* In every case involving an abused or neglected child which results in a judicial proceeding, the State must insure the appointment

ment of a guardian ad litem or other individual whom the State recognizes as fulfilling the same functions as a guardian ad litem, to represent and protect the rights and best interests of the child. This requirement may be satisfied: (1) By a statute mandating the appointments; (2) by a statute permitting the appointments, accompanied by a statement from the Governor that the appointments are made in every case; (3) in the absence of a specific statute, by a formal opinion of the Attorney General that the appointments are permitted, accompanied by a Governor's statement that the appointments are made in every case; or (4) by the State's Uniform Court Rule mandating appointments in every case. However, the guardian *ad litem* shall not be the attorney responsible for presenting the evidence alleging child abuse or neglect.

(h) *Prevention and treatment services.* The State must demonstrate that it has throughout the State procedures and services deal with child abuse and neglect cases. These procedures and services include the determination of social service and medical needs and the provision of needed social and medical services.

(i) *Confidentiality.* (1) The State must provide by statute that all records concerning reports and reports of child abuse and neglect are confidential and that their unauthorized disclosure is a criminal offense.

(2) If a State chooses to, it may authorize by statute disclosure to any or all of the following persons and agencies, under limitations and procedures the State determines:

(i) The agency (agencies) or organizations (including its designated multidisciplinary case consultation team) legally mandated by any Federal or State law to receive and investigate reports of known and suspected child abuse and neglect;

(ii) A court, under terms identified in State statute;

(iii) A grand jury;

(iv) A properly constituted authority (including its designated multidisciplinary case consultation team) investigating a report of known or suspected child abuse or neglect or providing

services to a child or family which is the subject of a report;

(v) A physician who has before him or her a child whom the physician reasonably suspects may be abused or neglected;

(vi) A person legally authorized to place a child in protective custody when the person has before him or her a child whom he or she reasonably suspects may be abused or neglected and the person requires the information in the report or record in order to determine whether to place the child in protective custody;

(vii) An agency authorized by a properly constituted authority to diagnose, care for, treat, or supervise a child who is the subject of a report or record of child abuse or neglect;

(viii) A person who is responsible for the child's welfare, with protection for the identity of any person reporting known or suspected child abuse or neglect and any other person where the person or agency making the information available finds that disclosure of the information would be likely to endanger the life or safety of such person;

(ix) A child named in the report or record alleged to have been abused or neglected or (as his/her representative) his/her guardian or guardian ad litem;

(x) An appropriate State or local official responsible for administration of the child protective service or for oversight of the enabling or appropriating legislation, carrying out his or her official functions; and

(xi) A person, agency, or organization engaged in a bonafide research or evaluation project, but without information identifying individuals named in a report or record, unless having that information open for review is essential to the research or evaluation, the appropriate State official gives prior written approval, and the child, through his/her representative as cited in paragraph (i) of this section, gives permission to release the information.

(3) Nothing in this section shall be interpreted to prevent the properly constituted authority from summarizing the outcome of an investigation to the person or official who reported

the known or suspected instances of child abuse or neglect or to affect a State's laws or procedures concerning the confidentiality of its criminal court or its criminal justice system.

(4) HHS and the Comptroller General of the United States or any of their representatives shall have access to records, as required under 45 CFR 74.24.

[48 FR 3702, Jan. 26, 1983, as amended at 50 FR 14887, April 15, 1985]

§ 1340.15 Services and treatment for disabled infants.

(a) *Purpose.* The regulations in this section implement certain provisions of the Child Abuse Amendments of 1984, including section 4(b)(2)(K) of the Child Abuse Prevention and Treatment Act governing the protection and care of disabled infants with life-threatening conditions.

(b) *Definitions.* (1) The term "medical neglect" means the failure to provide adequate medical care in the context of the definitions of "child abuse and neglect" in section 3 of the Act and § 1340.2(d) of this part. The term "medical neglect" includes, but is not limited to, the withholding of medically indicated treatment from a disabled infant with a life-threatening condition.

(2) The term "withholding of medically indicated treatment" means the failure to respond to the infant's life-threatening conditions by providing treatment (including appropriate nutrition, hydration, and medication) which, in the treating physician's (or physicians') reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all such conditions, except that the term does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when, in the treating physician's (or physicians') reasonable medical judgment any of the following circumstances apply:

(i) The infant is chronically and irreversibly comatose;

(ii) The provision of such treatment would merely prolong dying, not be effective in ameliorating or correcting all of the infant's life-threatening con-

EXHIBIT A

DATE 2-16-87

HB # 655

TO: House Judiciary committee, Representative Earl Lony, Chairman

FROM: Jim Haynes, Montana Magistrates Association

RE: Opposition to HB 655

HB 655 Attempts to address the problem of hearing a "small" case two times before two separate levels of judges or juries. The Montana Magistrates Association is unaware of this as a widespread problem. Usually time and expense prohibits small cases from going very far.

Adequate mechanisms now exist: small claims courts work as courts of record to address just this problem, MCA § 3-12-102 (District Court) and 3-10-1002 (Justice Courts). Municipal courts in cities over 10,000 population are authorized as courts of record, MCA § 3-6-101.

HB 655 requires all courts to be courts of record, which seems too broad a reform to address what may be a local problem. It could require ordinary citizens to use lawyers in all cases to safeguard their procedural appeal rights.

Finally, if reform is required for city and justice court proceedings, the Supreme Court has established the Commission on Courts of Limited Jurisdiction to study and to request these kinds of reforms. A reform this sweeping should be made after review by the Commission on Courts of Limited Jurisdiction and in conjunction with recommendations from the Montana Bar Association, other legal organizations and citizens groups.

We oppose HB 655 as attempting overly broad court reform without sufficient study.

February 14, 1987

Capitol Station
Helena, Montana 59620

EXHIBIT A
DATE 2-16-87
HB # 679

Dear Legislators,

I am a Regional Representative from the MONTANA COALITION AGAINST DOMESTIC VIOLENCE (SPOUSE ABUSE & CHILD ABUSE), and I am asking for your support of HOUSE BILL 679--"An ACT to Allocate 50% of the Revenue from Fines for the Commission of the CRIMINAL OFFENSE of DOMESTIC ABUSE to the Battered Spouses and DOMESTIC VIOLENCE GRANT PROGRAM.

In February of 1977, the MONTANA LEGISLATURE started working with us to start solving the problem of DOMESTIC VIOLENCE by a SENATE-HOUSE JOINT RESOLUTION which mandated Crime Control to study Spouse Abuse in Montana. That Study was made and called 'SPOUSE BATTERING IN MONTANA'. In April of 1978, Governor Judge appointed a STATE TASK FORCE ON SPOUSE ABUSE which was established to read and study 'THE STUDY' and make recommendations to the 1979 LEGISLATURE. In addition to the LEGISLATION that has been passed by you in the last 5 LEGISLATURES, the MONTANA TASK FORCE ON SPOUSE ABUSE (which I Chaired for 4½ years has:)

- Developed a STATE TRAINING PACKET ON SPOUSE ABUSE for Mental Health Professionals & Clergy.
- Developed a SPOUSE ABUSE PROTOCOL in the 61 State Hospitals
- Developed a RAPE PROTOCOL in the 61 State Hospitals.
- Developed a booklet with the STATEWIDE SERVICES entitled 'BATTERED WOMEN RIGHTS & OPTIONS.
- Do COMMUNITY INTERVENTION WORKSHOPS sponsored by the LAW ENFORCEMENT ACADEMY
- Spearhead GRASS ROOTS EDUCATION on the Problem in Communities.
- Do STATE WORKSHOPS in Training Advocates; latest research on the CYCLE OF DOMESTIC VIOLENCE.
- In October 1982, formed the MONTANA COALITION AGAINST DOMESTIC VIOLENCE who are:
 - Continuing the GRASS ROOTS EDUCATION STATEWIDE (I do 60 Talks/Workshops yearly
 - Continue our Systemic Approach to the Problem with STATEWIDE WORKSHOPS (see enclosed STATE WORKSHOP BROCHURES of Missoula '85; Glendive '86.)
 - Sponsored our 2nd 'LOVE WITHOUT FEAR WEEK' around the STATE with the MONTANA FLORISTS ASSOCIATION
 - The 8 SHELTERS and 12 TASK FORCES (who have Private Safe Homes) and network with the Shelters if needed have continued to Volunteer their services and do Educational outreach as Listed below: (*asterisk denotes Shelters)

Hi-Line Help for Abused Spouses does Education and Outreach into Toole, Pondera, Choteau, and Teton Counties, & State Workshop.

****Great Falls Mercy Home** has done Education & Outreach to :Belt, Law Enforcement Training in Lewistown, Cascade, Stockett, Ulm, Vaughn, Sand Coulee, Choteau, Presentors at both MCADV STATE DOMESTIC VIOLENCE SEMINARS in Missoula & Glendive) with SRS, Mt. Legal Services, Women's Law Caucus, Mt. Peace Officers/Mt. Chief of Police Assoc./Crime Control

****Missoula BW Shelter & Women's Place** -have done Education & Outreach to: Stevensville, Hot Springs, Hamilton -Darby, Seeley Lake, Ronan, Frenchtown, Milltown, Potomac, and Sponsors of the 1st 'Legal Advocacy for Battered Women in Montana' Workshop with Mt. Legal Services in Feb'86.

Kalisbell Violence Free Crisis Line has done training for Sheriff's Officers & Churches, Columbia Falls, Olney, Dayton, & several State Workshops on Spouse/Child Abuse

****Pablo-Ronan** Family Crisis Center is doing 'Responsible Parenting Classes' in Polson along with establishing a Resource Center in Polson. Also in St. Ignatius/Ronan

Libby Lincoln County Women's Help Line has done Lincoln Co. reserve Sheriff Officer's Training, plus Training to the Lincoln County Bar Association.

****Helena** Friendship Center has done Education & outreach to Boulder, Townsend, Augusta.

****Butte** Safe Space has done Education & Outreach to: Whitehall, Sheridan, Anaconda, Deer Lodge. Dillon has done 12 hrs. Advocate training for 6 Advocates from Twin Bridges (Madison Co.), Has presented programs in Sheridan, Twin Bridges, & Dillon Schools; plus Awareness Programs in Lima, Dell, Grant, Wisdom, Jackson, Wise River, Divide, Melrose, Glen, Laurin, Virginia City & Ennis in Beaverhead, Madison & Silver Bow Counties.

****Bozeman** Battered Women's Network has a 1-800 Number to do Outreach to surrounding area in addition to their Educational Outreach to: Belgrade, Ennis, Livingston, West Yellowstone, Big Sky, White Sulphur Springs, & State Workshops.

****Havre** Shelter HRDC D.V. Program has done 20 hr. Advocate Training in Havre, Wolf-Point/Poplar area, Malta & Rocky Boy so they could begin their own Programs.

EXHIBIT H
 DATE 2-16-87

**Billings Gateway Shelter has done outreach & Education to: Ft. Belnap Reservation, Cheyenne Reservation, and Crow Reservation plus in the Billings Area. #699
Colstrip Battered Women's Task Force has been doing Education & Outreach in that Area.
Glasgow Area Spouse Abuse Task Force did Outreach to Richland, Nashua, Malta
Glendive Dawson County Spouse Abuse Program to Education to Wibaux, Terry, Circle & a State Domestic Violence Seminar they hosted.
Sidney Richland County Coalition Against Spouse Abuse has done Training with Volunteers plus Education in that Area.
Miles City Mental Health 24 hour Crisis Line
Harlem Ft. Belnap Tribal Health
Twin Bridges 24 hr. Crisis Line/Information
Whitehall Information and referral & Jefferson Ct. Spouse Abuse Program
Lewistown Spouse Abuse Vital Emergency Services (S.A.V.E.S.) has done Public Awareness and Education to Churches in six-county Area, all Schools, Legal Professionals and Law Enforcement.

The Great Falls Mercy Home opened in May 1977, our first Shelter in Montana and one of 30 in the United States addressing the problem of Spouse Abuse. We have been able to give Technical Assistance and spearhead 7 other Shelters and 12 Spouse Abuse Task Forces in Montana.

In 1979, the LEGISLATURE raised the marriage License fee to fund the Battered Spouse Programs under the DOMESTIC VIOLENCE GRANT PROGRAM. In 1983, the LEGISLATURE added 6% out of General Funds (over and above the Marriage License Fee); and the 1985 LEGISLATURE added 4% out of General Funds (over and above the 6% and the MLF) but since the SPECIAL SESSION in June 1986 cut 5% Across the Board, we never received the 4%.

A Shelter as large as Mercy Home (which can accomodate 22-27 Women & Children) served 538 Women and Children 'in' the Shelter in 1986, and an Additional 1,331 Family Units in Outreach, plus 1,113 in Telephone Advocacy, and Educated 2,250 people in over 70 Local Talks and Workshops given in the Schools, Jr. High, Communities.

This is an Increase in Client Load again for the 5th year of 28% with the same amount of Staffing.

The Great Falls Community has been one of a great deal of support to the Mercy Home since we first began operation in 1977. Last year we received a total of \$145,407.00 of IN-KIND CONTRIBUTIONS of which 80,289.00 was Donated SERVICES of VOLUNTEER STAFFING which has enabled us to keep our Staffing costs low, and has strengtened our Counseling & Advocacy Services. Our Budget last year was \$85,000.00; and the Domestic Violence State Grant furnished about one-fourth of that Budget; and Locally thru United Way and Donations we have another fourth of our Budget each year. The rest of the Budget is funded by the 14 Grants I write each year.

I have continued COMMUNITY COALITION BUILDING and involvement through our GREAT FALLS COMMUNITY FOOD BANK which networks with the STATE FOOD BANKS. We disbursed \$270,000.00 worth of Food in Gt. Falls last year (\$15,000.00 to each of the 18 Non-Profit Agencies that are a part of the FOOD BANK. We are currently working on having 2nd Harvest to come into MONTANA which will greatly enhance the 48 FOOD BANKS STATEWIDE.

I am proud of the ways in which our 'GRASS ROOTS' plans of the MONTANA COALITION AGAINST DOMESTIC VIOLENCE have developed into Strong Programs of Human Services & Education through the cooperation of the past FIVE LEGISLATURES, the past two Governors, and the Department of Social & Rehabilitation Services in the STATE OF MONTANA. Due to Economic conditions and high unemployment (a triggering event for Domestic Violence), we are seeing a tremendous increase in Client Loads. With a portion of the Domestic Abuse Fines, we will continue to stretch every penny to benefit the entire STATE.

Sincerely,

Caryl Wickes Borchers
 Caryl Wickes Borchers

Executive Director, Great Falls Mercy Home
 Chair, Montana State Task Force on Spouse Abuse (1978-82)
 Rep., MONTANA COALITION AGAINST DOMESTIC VIOLENCE

EXHIBIT B
DATE 2-16-87
HB # 679

HOUSE BILL 679
TESTIMONY BY
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

The Department supports the Bill for several reasons. First, the Domestic Abuse Program Funds were to encourage a State-wide network of programs to address and service victims of Domestic Violence. Of the original programs funded in FY '80, seven (7) are still working and providing services in their communities. These were 5 shelters - Mercy Home in Great Falls; Gateway House in Billings; Battered Women's Network in Bozeman; Friendship Center in Helena; and YWCA Shelter in Missoula - with two other programs providing safe homes, counseling, advocacy and educational information - in Dillon; and Women's Place in Missoula. Several other communities since that time have implemented programs so that the past few years we contracted with 16 - 18 programs. These include 3 other shelters at Butte, Havre, and Ronan, plus programs offering safe homes and other services, at Kalispell, Libby, Gilford, Harlem, Colstrip, Glendive, Sidney, and Lewistown.

In the last 5 (five) years, the Domestic Abuse Funds appropriated by the Legislature have increased only \$16,371. These funds have been used to maintain the seven original programs and add eleven programs. After eight years of operation, we are no longer in a position of only starting new programs, but rather, maintaining what has begun.

The marriage license fee of \$14 is not a reliable source to anticipate any funding growth since Montana's population shows very slow growth and the number of marriage licenses over the past six years have been on a steady decline. (See Attachment)

Secondly. It seems sensible to have the courts fine the abusers who are causing domestic violence to their families with a portion of the funds used for providing services to the victims. The women and children, many times, become up-rooted from their homes and need to start from scratch with only extremely limited resources. Shelter, safe homes, transportation to a safe location, and counseling to help mend broken minds while broken bodies heal, are the relief needed from the abusers in Domestic Abuse.

Third. The community programs are required to have a 20% local match, revenue or in-kind contribution. They use a variety of local funding resources, depending on their particular community. However, because of the State's economy, many local sources are diminishing since other programs and special funding events have turned dramatically to private sources. Private grant resources are getting so competitive, programs need skilled grant writers, with research and development experience, to obtain funds. Since the domestic abuse programs rely on mostly volunteers, those persons with unique grant preparation skills are not always available. New volunteers have to be trained frequently to work in this highly emotional and stressful program with the threat of further violence always present to victims, as well as, staff and volunteers.

B
2-16-87
679

The only professionally trained staff in most programs is a paid director, sometimes only a part-time paid position. The burn out rate is high as program directors in the 2 Missoula, Kalispell, Bozeman, Havre, Libby, Dillon, Ronan, Lewistown, and Butte Programs have all changed within the past year or so after being in their positions only two to three years.

For House Bill 679, revenue projections are based on what little fine information is available. It is anticipated that \$19,750 will be generated for Fiscal Year 1988 and \$21,750 for Fiscal Year 1989.

Through the change in diverting part of the mandatory arrest fines to the Domestic Abuse Program, the effect would be to strengthen and maintain the local community programs otherwise not possible.

Boyce D. Fowler
Domestic Violence Program Manager

EXHIBIT B
 DATE 2-16-87
 HD # 679

House Bill 679 - Testimony
 Page 3 -- Attachment

	FY '81	FY '82	FY '83	FY '84	FY '85	FY '86
Number of Marriage Licenses	8,209	8,185	8,092	7,659	7,178	6,618 (est.)
	(.....continous decline.....)					

	FY '83	FY '84	FY '85	FY '86	FY '87
Funds Appropriated	115,500	121,744	130,875	131,871	131,871
	(.....increase \$16,371.....)				

BF:kb
 #L2/41
 February 13, 1987

EXHIBIT C

DATE 2-16-87

HE # 679

Please support House Bill No. 679 for people that need a place to be safe, like my kids and I did in December of 1985. We went and stayed at the Mercy Home in Great Falls the same day as the restraining order and divorce papers were served on my ex husband.

If there wasn't a Mercy Home I don't know where we would have gone. We couldn't go to my folks house because it is the first place he would have looked, and it is in the same block as the house we live in.

My ex husband is a Viet Nam Vet, and he still is afraid of someone or something coming to get him. He lives with a loaded 9MM on him at all times and he sleeps with it under his pillow. In the last week before we left the house I saw him grab the 9MM twice when my brother and my 10 yr. old son came in the door of the house. He would let the 2 yr. old baby play with the gun. You can not imagine what it is like to walk in a room and see your baby playing with a loaded gun, swinging it around with the other kids in the room. When I said something to my ex husband he told me he couldn't understand why I was so upset because Levi couldn't cock it. This same man would take his gun out and play with it when he was mad at me. There was a number of times I wondered if he was going to shoot me. There was one day in April of 85' he had been fishing on the river and came home and told me he had almost done it. I asked what, he told me he had been fishing, and someone above him started throwing

EXHIBIT C
DATE 2-16-87
HB # 679

rocks in the water while he was fishing so he shot at them. He told the counselor at Mental Health that he wasn't shooting at them he was shooting at the rocks below them, just so they knew he was there. This same man threatened to shoot a snowman I made because he thought it was someone breaking in the house and the lamp on the TV was his partner. I wondered if some night he wouldn't shoot me when I would get up to take care of the kids and he would mistake me for someone or something. He has alot of nightmares and is still back in Nam and something is always chasing him.

The time wasn't only hard on me, but the kids as well. Cody my oldest son kept asking me if we couldn't divorce him. My ex husband was never very good to any of the kids. He would buy food and the kids couldn't have any. One time he hit Cody across the room because he didn't like his answer on his home work.

Josh, the 4 yr. old at the time started to behave like his Dad. He thought it was normal to sleep with a gun because his Dad did. He would hide one under his pillow at night like Dad. His Dad was also teaching him to choke for the future. Josh would get mad at the kids and one time I found him choking Levi, the 2 yr. old, because that was what his Dad had taught him. He didn't like his Dad very much. He wanted to move to Louisiana and leave his Dad here. To this day he still tells me he is very angry with him because of the things he has done to him.

EXHIBIT C.6
DATE 2-11-87
HB # 679

Ever since Josh has been forced to go and visit his Dad by himself I have been taking him to Mental Health. He is only just now getting to like his Dad and the only time he feels comfortable is if there is a third person around. The last time he stayed by himself with his Dad he came home in such a deep depression he cried for 2 days. I don't know what all happened but his Dad told him he was going to shoot Santa and his reindeer on Christmas Eve.

When confronted with his behavior he says he can't understand why the kids don't like him because he is such a wonderful person. I am still afraid of this man and have had the Doctor say they thought he was explosive and they didn't want to put the kids and I in any more danger. This man only owns guns that have a clip that holds several rounds and since the divorce he has purchased a machine gun. At one time here in town he called the Police Department to find out what the regulations were and what the fine was for carrying a concealed weapon. I told him I didn't have the \$500 to get him out of Jail and he told me it didn't matter because they would have to kill him first before they took his gun away.

About a month before we went to the Mercy Home I asked my ex husband if he was happy with the way our life was. He said No. I told him I wasn't either and told him to go find his happy some place. He told me no. He didn't want to and the kids and I were to live like we were, miserable because that was the

EXHIBIT C

DATE 2-16-87

NO # 679

way he wanted it. What we wanted did not matter. I do know that it isn't right to have to take a normal child to Mental Health every week since his forced visitation with his father. And no one should ever be forced to live like the kids and I did because they don't have a choice. For five years he told me he was going to die any minute. I thought I could stay with him if he was going to till he did die. I stayed for as long as I could stand it.

That is why we need a Mercy Home so everyone always has some place to go to be safe or at least a choice

Roxanne
Roxanne

WOMEN'S LOBBYIST FUND

Box 1099
Helena, MT 59624
449-7917



EXHIBIT 1

DATE 2-16-87

HB # 679

February 16, 1987

Testimony in support of HB 679

Mr. Chairman and Members of the House Judiciary Committee:

My name is Debra Jones. I speak on behalf of the Women's Lobbyist Fund, a coalition of 39 organizations representing over 6500 individuals. The WLF supports HB 679. The most appropriate place to use the money from domestic violence arrest fines is on local spouse abuse programs and shelters.

Montana has very clear and strong public policy concerning domestic violence, and we should be proud of that fact. Our presumption of arrest law is one of the most progressive domestic violence policies in the country. Studies have shown that arrest is the single best deterrent to repeat offenses of domestic violence. With HB 679, we can strengthen our public policy even more.

Montana has 15 domestic violence programs and 8 shelters that offer a service to our communities that is desperately needed. Last year these programs provided crisis intervention to almost 6000 individuals, emergency shelter to over 800 women and 1100 children, long term assistance to 1100 individuals, and education to 11,000 citizens.

As we all know, Montana is facing tough economic times, and one sign of the times is the increasing case load that many programs are experiencing. Yet, in the face of this increased caseload, the Human Services Subcommittee has already cut out the General Fund monies for spouse abuse programs, resulting in a 25 percent decrease in state funding. These programs already are understaffed, overworked, and operate on shoestring budgets. They all rely heavily on dedicated volunteers. Additional monies from arrest fines will help these programs keep their heads above water so they can serve their increasing client loads.

We must remember that, for many battered women and their families, emergency shelters are their only way out. If programs are forced to reduce the services they provide because of lack of funding, more families will end up staying in abusive homes.

Our domestic violence programs and shelters have made a very real and significant contribution to Montana. They have created a successful grassroots movement by bringing assistance and public awareness to spouse abuse. Transferring arrest fines back to local programs will strengthen our public policy and our statewide efforts to eliminate spouse abuse. The WLF urges you to give HB 679 a "do pass" recommendation.

WITNESS STATEMENT

EXHIBIT D

DATE 2-16-87

HB. #679

NAME Debra Jones BILL NO. HB 679

ADDRESS P.O. Box 1099 DATE 2/16/87

WHOM DO YOU REPRESENT? Women's Lobbyist Fund

SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

February 13, 1987

EXHIBIT E
DATE 2-16-87
HB # 679

Dear Legislature:

I urge you to pass HB: 679.

I am one of many women who are abused each year with little or nothing done. We are fortunate here in Great Falls, to have the Mercy Home but without some funding how long can it survive??

In February 1985, I had to go to the Mercy Home due to physical abuse by my husband. After we had been out having a good time for my birthday, he became physically abusive. Pushing me off the bed and he started to twist my left leg toward my head with his foot on my chest and throat, stopping only because my daughter came into the room yelling at him to stop. After a few minutes he stops and turns over in bed and went to sleep. My daughter and I left our home to call the police---they stated they couldn't arrest him because I'd left the house. I did press charges and they, the court, fined him \$100.00. I spent a few days at Mercy Home until I could get housing. I filed for divorce. Only 18 months (Aug. 3rd) after the divorce, he again choose to abuse me by following me out in the parking lot of a public establishment. Twisting my left arm and breaking it---throwing me to the ground. A passer by called for help. He spent the night in jail and pleaded not guilty and the trial date was set for March 9th. I am still going for therapy on my arm, trying to get it more functional---costing me \$20,000.00 in hospital and aftercare costs, not to mention I have been unable to work now for 7 months. I worked as a licensed practical nurse, but no longer will be able to stay in my field. It is not easy finding a new type of a job at 46 years of age.

These things go on all the time. They (the abusers) need to be charged and made to pay for the damages, some of the money going to the abused and some going to the programs and homes helping us but without some funding how can they function???

Thank you for your time.

Carol Bullard

Carol Bullard
707 Parkdale
Great Falls, Mt 59405

WITNESS STATEMENT

EXHIBIT F
DATE 2-16-87
HB # 679
BILL NO. 679NAME Lenore F. Tahipens
ADDRESS 1026 Ninth Ave. DATE _____
WHOM DO YOU REPRESENT? Friendship Center
SUPPORT ☒ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Perpetrators of crimes & spouse abuse
is a crime must pay for costs
incurred by victims & children &
be responsible for their actions.

EXHIBIT CDATE 2-16-87

February 14, 1987

HB # 679

Dear 1987 Legislators:

Please support House Bill 679 which provides a portion of the Domestic Abuse fines for the funding of emergency shelters and other domestic abuse programs. The movement to stop domestic abuse started as a grass roots program, with Mercy Home in Great Falls as one of the first shelters for abused women in the Nation. Many long, stressful hours given by dedicated volunteers has gotten us where we are today. With a million dollar statewide budget, a full half of those monies for running shelters and other domestic programs still come from volunteer efforts and donations.

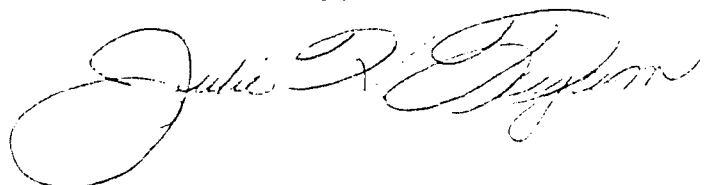
Mercy Home in Great Falls drastically changed the course of the lives of myself and my two small children, perhaps even saved them. It gave us a safe place to go to flee a very abusive husband and father. It gave me counseling which helped me to understand the cycles of abuse and that battering is learned behavior. That explained to me why nothing I did or didn't do, said or didn't say ever made a difference in the incidences of abuse. My situation had escalated to the use of guns by my ex-husband to threaten me in front of my children, then aged 3 and 1. He often hit me with a closed fist in the head while I was holding one of my children. He beat me when I was pregnant. He was very abusive to my children, hitting, tripping and picking my 3 year old up by the neck, and spanking my baby and literally throwing her into her crib. My marriage had become a nightmare. Mercy Home helped me change my life, at no cost to me. This is important to note because when a woman leaves an abusive home, she often flees with little but the clothes on her back. I am now self-supporting and content with my life. My children and I no longer live in fear.

By supporting funding for domestic abuse programs, you not only help one person, but generations to come by showing them that battering is learned behavior, that they are not the cause of battering incidents, and that they can change the course of their lives.

I can think of little worse than living in constant fear and repression in your own home. Please support House Bill 679. Help our children learn what love is. Help society continue to get the message across to abusers that domestic abuse is not acceptable behavior. It is a crime.

Thank you for your time.

Yours sincerely,



Montana Coalition Against Domestic Violence

Testimony of Deborah Kimmet
February 16, 1987

EXHIBIT H FOR HB 679
DATE 2-16-87
HB #679

I am Deb Kimmet, a domestic violence expert. I have been the director of a domestic violence program in Missoula and am now the Director of the Battered Women's Network in Bozeman. I am also Treasurer of the Montana Coalition Against Domestic Violence. I bring to this hearing a variety of experiences and a statewide perspective on the issue.

I. What We Do

I would like to discuss the impact of domestic violence programs in Montana. The statistics before you were compiled by the Coalition - and represent only the member programs of the Coalition.

During 1986, these programs reported:

5,559 crisis calls - these are men; women; family and friends who need immediate assistance.

2,372 personal contacts - which are in-person meetings with someone desiring crisis support and information.

2,290 women and children sheltered in shelters and safe homes.

Safe homes are private residences where people have volunteered space in their homes to house victims of domestic violence during emergencies.

Thus making a total of 10,221 persons who received emergency services last year.

II. Current Funding Realities

In looking at the positive side of our funding:

The federal government provided VISTA workers and Crime Control funds in 1986.

The private sector, such as corporations and foundations also provide money to shelters.

Locally, 36% of the \$450,000 needed to operate the local programs were provided through local fundraising and giving programs such as United Way.

In in-kind contributions alone, it doubles the amount of actual monies received to over \$900,000. This means that there are a lot of programs utilizing volunteer services and contributions in an extremely efficient and effective manner - even when these are considered to be economically depressed times. This also shows that there is large grass-roots support for our programs.

In looking at the bleak side:

The private corporations and foundations only have so much money to distribute and more and more agencies are applying for these monies as governmental support drops away. These monies are often restricted to geographic areas where subsidiaries are located.

victim - the entire family is involved - and all parties need to be addressed. The programs are at this point - we're ready. However, given current funding realities and the constant increase in demand for our services, incorporating a family systems approach will require more money or in-kind contributions.

IV. Domestic Abuse Fines

Two years ago, the Coalition and several individual programs approached the legislature to introduce legislation concerning several aspects of domestic violence - one of which is the legislation making domestic violence a crime. With the passage of these laws came a fine of up to \$500 levied for violation of the statute. In addition, law enforcement officers were instructed to arrest as a preferred response.

In doing an informal survey at the last state Board meeting of the Coalition, it was found that most court systems do not levy the full \$500.00 fine. Fees range from \$50.00 to \$300.00. Therefore, several points could be made:

1. Court systems are meeting their financial needs without levying the full fine as allowed for by law.
2. Everytime a batterer is arrested, it costs the court systems, it costs the law enforcement agencies and it costs the local programs in providing services to the victims. At this point the courts and the law enforcement agencies are receiving reimbursement. The local programs are not.
3. Since the local courts are not levying the full fines, there is room to raise the fees in order to compensate for this 50% we are asking for - AND still ensure that the local criminal justice systems meet their costs.
4. Out of all the sources from which we receive our funding, this legislation alone would ensure that the people doing the battering would actually contribute to the care of their family.

I would like to thank you for your continued support of domestic violence legislation. I would be happy to answer any questions that you may have at this time.

Montana Coalition Against Domestic Violence

Services Provided - 1986

DATE 2-16-87

HE # 679

There are currently 15 domestic violence programs, representing 6 shelters and 7 safe home systems, who are members of the Coalition. Each of these programs provide 24 hour emergency services, advocacy support and public education.

During 1986, the member programs of the Coalition reported:

- 5,559 crisis calls
- 2,372 personal contacts
- 1,169 women and 1,121 children sheltered
- 10,221 people received crisis services

Additionally,

- 610 women, men and children attended support groups.
- 459 speeches, educational forums and workshops were provided for 14,921 community members and professionals.
- 530 volunteers, 256 providing direct crisis intervention

** 25,752 people benefited from local domestic violence programs in 1986.

These services have been the responsibility of 27 full and part time paid staff (6 funded by federal monies) and 9 VISTAs who will no longer be available after this fiscal year.

Budget Information - 1986

The total cost of providing these 24 hour services is over \$900,000. One-half of this cost is provided by in-kind contributions of 530 volunteers and local communities.

The dollar cost of these programs in 1986 was over \$450,000. The average program budget was approximately \$31,000 - ranging from \$400 to \$80,000. A breakdown of funding sources shows:

- 22% provided by marriage license and general fund monies through SRS.
- 36% provided by local communities.
- 12% raised through grant writing efforts.
- 31% provided from federal monies. This is the first year these monies have been available. Their status for FY88 is not known.

** A total of 49% of actual program dollars were raised through local community and grant writing efforts.

** General fund monies may not be available after July 1, 1987. VISTA workers will not be available after July 1, 1987.

** In addition to the almost \$470,000 donated by volunteers, 58% of actual program dollars were raised locally through United Way, donations and marriage license fees.

Information compiled by: Lucille Pope, Coordinator
Box 5096, Bozeman 59715
586-3084 or 586-0263 (messages)

VISITORS' REGISTER

COMMITTEE

679

Feb. 16, 1987

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

A
2-16-87
#715

PEGASUS GOLD CORPORATION

THE MONTANA TUNNELS PROJECT

Montana Tunnels Mining Inc.

VISITORS' REGISTER

COMMITTEE

BILL NO.

679

DATE

Feb. 16, 1987

SPONSOR

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Cary Wickes Borchers	St. Falls, Mt.	✓	
Linore F. Talisman	Helena, MT	✓	
Mollie B. Gervel	Great Falls	✓	
James W. Warrington	Great Falls	✓	
Lois Quantia	Great Falls	✓	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

WITNESS STATEMENT

EXHIBIT BDATE 2-16-87HB # 715

NAME John S. Fitzpatrick BILL NO. 715
ADDRESS Box 176 Jefferson City, MO DATE 2/16/87
WHOM DO YOU REPRESENT? Pegasus Gold Corp.
SUPPORT OPPOSE X AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Pegasus Gold Corp strongly opposes HB 715
AN act to remove the right of eminent domain
for mines, mills, and smelters. Current
law permitting eminent domain actions is
critical to the development of mines and
mineral facilities in the state. Our newest
project, Mountain Tunnel, near Jefferson
City is a case in point. That facility,
which will employ up to 200 workers when
fully operational, would not have been
built had the mining industry not had access
to the current eminent domain statute. One
landowner with three acres of surface rights
(no minerals) attempted to block the project's
development to preserve a summer cabin. ~~the~~
company ~~ultimately~~ ultimately acquired the landowner
property at 4 times the price the landowner had
paid three years earlier plus three acres of
land outside the permitted mine area. While we
didn't actually condemn the property, the the
effect of such a condemnation suit was sufficient
to bring a recalcitrant ~~landowner~~ ^{landowner} to the bargaining

To date, Mr. Tunnels has provided employment
to over 500 construction workers, ~~approximately~~
^{by four of 30 major} construction contracts were awarded to
Montana construction companies. Over \$2.0 million
of contract work went to Missoula county
contractors, just about \$5.0 to firms from
Gallatin County, over a \$1.0 to Yellowstone,

When fully operational Mr. Tunnels is in full
operation, it will employ up to 200 workers
with an ~~annual~~ annual payroll of \$6.6 million.
The company expects to spend \$24.5 million
annually on goods and services, much of it in
Montana. The State needs that kind
of economic stimulus. HB 715 will take
away an important tool for the industry.
and, when that happens, the industry will
not be able to make the kind of economic
contributions listed above.

WITNESS STATEMENT

AMEND C
DATE 2-16-87
HB # 715

NAME T. M. Rollins BILL NO. H.B. 715
ADDRESS P.O. Box 868, Troy, Mt 59955 DATE 2/16/87
WHOM DO YOU REPRESENT? ASARCO, Inc.
SUPPORT _____ OPPOSE ✓ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: MR. CHAIRMAN, MEMBERS OF THE COMMITTEE

MY NAME IS TED ROLLINS, I REPRESENT ASARCO INCORPORATED.

I RISE IN OPPOSITION TO H.B. 715 FOR THE SAME REASONS OUTLINED BY WARD SHANAHAN AND OTHER OPPONENTS OF THE BILL.

TO REMOVE THE PROTECTION AFFORDED BY THE EMINENT DOMAIN LAW FROM FUTURE DEVELOPERS OF OUR MINERAL RESOURCES IS UNJUST.

I URGE A DO NOT PASS RECOMMENDATION ON HB 715

T. M. Rollins
Lobbyist

A
216 87
#720

TESTIMONY OF STEVEN C. BAHLS,
Assistant Professor of the
University of Montana School of Law
in Support of House Bill 720

The Montana Business Corporations Act, enacted in 1967, is the law that governs how corporations are formed, how they are operated, and how they are dissolved. This statute is based upon the Model Business Corporations Act. The Model Business Corporations Act was drafted in 1950, primarily by a group of Chicago lawyers.¹ Experience has shown that, while these lawyers adequately provided for the needs of large corporations, they failed to provide for the needs of small business. In Montana, small business, including farmers and ranchers, have frequently gotten into expensive litigation, in part, because of the failure of the Montana Business Corporations Act to address their needs.

Consider these hypothetical cases which are indicative of the problems a small business may have.

1. A mainstreet business with one owner incorporates. The owner of the business thinks that he will not be personally responsible for the corporation's debts because corporations are separate legal entities. If that owner fails to elect himself to his own board of directors, have meetings (presumably with himself) and

keep "minutes" of those meetings, he may be personally liable for the corporation's debts because he did not follow the Montana statute.²

2. After Dad dies, three brothers inherited a ranch. The two oldest brothers moved out of state and the youngest brother operated the ranch. The two out-of-state brothers, wanting to sell their stock in the ranch, sold it to an out-of-state corporation, which removed the youngest brother from operation of the ranch.³

House Bill 720, if adopted, would save small businesses such as these from the problems I just described:

1. Any lawyer knows that small businesses usually are operated by their primary owner, who ignores the corporate formalities (election of board of directors, annual meetings, minutes, etc.). In a small business these are needless and House Bill 720 allows a corporation to operate more informally without losing its corporate protection.
2. Small businesses want to keep ownership of the business in the family. This may be done under existing law, but only if complex and expensive legal documents are drafted. Under House Bill 720, the law will allow

businesses to stay in the family by allowing the corporation the option to buy stock proposed to be transferred to outsiders.

Are we sailing into uncharted waters if we adopt House Bill 720? The bill is virtually identical to the Close Corporation Supplement to the American Bar Association Model Business Corporation Act. The Supplement was approved in 1984 by the American Bar Association Committee on Corporate Laws. As of last year 23 states have some sort of provisions in their business laws addressing the special needs of small corporations.⁴ The legislature of Montana has periodically updated its Business Corporation Act in accordance with American Bar Association Model Act revisions.

What if a small business doesn't like the provisions of House Bill 720? The provisions of House Bill 720 apply to small business only if the small business so elects. If the small business doesn't like the provisions of House Bill 720, then it does nothing and the existing law applies.

Why would a small business want to operate under House Bill 720? There are three reasons, in addition to solving the problems described previously.

1. It allows small business flexibility to vary normal

corporate rules to meet their business needs.

2. It protects shareholders who own less than 50% of the stock from unfair conduct by large shareholders.
3. It codifies the current practices of how business operates.⁵

I've recently seen publications⁶ which state that there are more benefits associated with incorporating in the State of Delaware than any other state. Most of those advantages are available in Montana--with a few exceptions. One of those exceptions is the availability of a special corporate law for small business. We too ought to have that advantage.

Prior to coming to Montana, I practiced law for six years in the State of Wisconsin, which has adopted an act nearly identical to that of House Bill 720. Small business has had a good experience with it.

Montana is a state where there are few big businesses and many small businesses--including farms and ranches. A statute to meet their needs is important.

1. 6 Business Lawyer 1 (1950).

2. See Brewster, "Piercing the Corporate Veil", 44 Mont. L. Rev. 91, 96 (1983). See also E.C.A. Environ. Management Serv., Inc., ___ Mont. ___, 679 P.2d 213 (Mont. 1984); Scott v. Prescott, 69 Mont. 540, 552-53, 223 P. 490, 494 (1924); and Hansen Sheep Co. v. Farmers' & Traders' State Bank, 53 Mont. 324, 331, 163 P. 1151, 1153 (1917).

3. The Montana Supreme Court has been forced to deal with several cases where family members who each own stock in a corporation are deadlocked in bitter disputes. See Fox v. 7L Bar Ranch Company, ___ Mont. ___, 645 P.2d 929 (1982); Maddox v. Norman, ___ Mont. ___, 669 P.2d 230 (1983).

4. O'Neal, Close Corporations § 1.15 (1986). Twelve of these states have a separate integrated statute, most of them being patterned after Delaware's law. Model Business Corporation Act Annotated, 1 P. 1818 (1986).

5. Committee on Corporate Laws, "Proposed Statutory Case Corporation Supplement to the Model Business Corporation Act," 37 Bus. Law. 269 (1982).

6. See, e.g., The Red Book Digest of Delaware Corp. Procedures (1976).

EXHIBIT B
DATE 2-16-87
HB # 720

TESTIMONY
HOUSE JUDICARY COMMITTEE
FEBRUARY 16, 1987

MARCIE QUIST
AMY GUTH

MONTANA CLOSELY HELD CORPORATION ACT

EXHIBIT B
DATE 2-16-87
HB # 720

Section 1 Short Title

Section 2 Application of MBCA and SCC

- a. Unless specifically covered by the SCC the MBCA controls
- b. SCC may also apply to a Professional Corp. Supp.
- c. SCC does not repeal or modify any statute or rule of law under MBCA of PCS

Section 3 Definition and Election of SCC

- a. Definition of SCC (stated in the Articles of Incorporation)
- b. Election of a an existing Corporation with 50 or fewer shareholders is by two-thirds of each class of shares
 - allowance of Dissenters rights

Section 4 Notice of SCC on Shares

- a. Conspicuous statement of election of SCC
- b. Written notice by Corp. after issuance or transfer
- c. SCC and MBCA notice of transfer restrictions satisfied
- d. Knowledge of documents is constructive notice of restricted transfer of shares
- e. Upon written request the Corporation shall provide of any provisions restricting transfer of shares or voting rights

Section 5 Share Transfer Prohibition

- a. May not be voluntary or involuntary transferred except if permitted by the Articles of Incorporation or after First Refusal
- b. Exceptions to share transfer prohibition
 - holders of the same class of shares
 - shareholders immediate family (defined)
 - transfers approved in writing by all shareholders
 - transfer to a fiduciary party
 - merger or share exchange
 - pledge as collateral (granted without voting rights)
 - after termination of the SCC status

Section 6 Share Transfer After First Refusal by Corporation

- a. The SCC must be given first offer to purchase shares
 - Price determined by third party offer
- b. Qualification of a third person
- c. Procedure for first refusal
- d. Logistics and procedure for acceptance of offer by Corp.
- e. Allocation of purchased shares
- f. Transfers to third parties within 120 days

Section 7 Attempted Share Transfer in Breach of Prohibition

- a. Any transfer in violation of prohibition is ineffective
- b. Exception: Transferee without notice gives Corp. option to purchase same terms and price.

Section 8 Compulsory Purchase of Shares after Death of

Shareholder

- a. If provided in Articles of Incorporation, Corporation required to purchase decedents' shares
- b. Modifications of this provision must be in the Articles of Incorporation
- c. Modification of mandatory decedent's share purchase provisions must be approved by two thirds shareholders vote
- d. Dissenter's rights to shareholder to rights are affected
- e. Written waiver
- f. Additional agreements for purchase of decedent's shares allowed

Section 9 Exercise of Compulsory Purchase Right

- a. To exercise right - written notice to Corp. w/in 120 days
- b. Procedure for purchase right - majority vote on option
- c. Purchase offer w/in 75 days, accompanied w/ financial information of Corp.
- d. Allocation of purchased shares to shareholders
- e. Pre agreed price or terms govern compulsory purchase under court action to compel purchase

Section 10 Court Action To Compel Purchase

- a. Right to proceeding to compel share purchase
-Corp required to provide notice to shareholders of action
- b. Court determines the fair market value (and orders purchase)
- c. Corp. may petition court to modify
- d. If payment is not made w/in 30 days, court may dissolve
- e. Person indemnifying payment for Corp., may recover from defaulter

Section 11 Court Costs and Other Expenses

- a. Court determines full costs, inc. lawyers fees, experts, appraisers and assess equally to corp. and the party
- b. All costs may be assessed to:
 - (1) The party: if fair value fails to substantially exceeds last purchase offer and is refused in bad faith
 - (2) The Corp: if fair value substantially exceeds last purchase offer and is refused in bad faith

Section 12 Shareholder Agreements

- a. Shareholders may agree in writing to the management, powers and relationship of shareholders of the Corp.
- b. The agreement is effective even if it;
 - (1) Eliminates board of directors
 - (2) Restricts discretion or powers of board
 - (3) Treats corp. as partnership
 - (4) Creates a partnership relationship among shareholders
- c. Any powers transferred by agreement from the board to shareholders, also transfers the liability (imposed by law) from the power to the shareholder
- d. The Articles of Incorporation must state the agreement to eliminate the board of directors

- e. The Articles of Incorporation must state entitlement of any shareholder to dissolve Corp.
- f. Unless otherwise provided for in the agreement, all shareholders must agree to any amendment of the agreement
- g. Before shares are issued, all subscribers may act as shareholders
- h. This section does NOT prohibit additional agreements

Section 13 Elimination of Board of Directors

- a. With a statement in the Articles of Incorporation, SCC may eliminate the board of directors
- b. Amendment to Articles of Incorporation for elimination of board requires approval of all shareholders
- c. Without a board of directors;
 - (1) business and affairs are managed by shareholders
 - (2) actions requiring directors approval then requires shareholder approval
 - (3) Shareholders are only liable for actions they have right to vote on
 - (4) Shareholder approval in SCC equals board approval as required by a state or the United States
 - (5) Resolutions by shareholders may appoint "designated directors" to sign documents
 - (6) Amendment to restore board of directors requires two thirds vote of shareholders and names of new board

Section 14 Bylaws

- a. No bylaws are required if provisions required by law are present in either the articles of incorporation or shareholders agreements
- b. When SCC status terminates the Corp must adopt bylaws

Section 15 Annual Meeting

- a. Unless provided for otherwise, the annual meeting date is the first business day after May 31st.
- b. Annual meeting is not required

Section 16 Execution of Documents in More than One Capacity
Individuals may hold more than one office in corp.

Section 17 Limited Liability

Failure to exercise formalities shall not place Corp. liabilities on the shareholders

Section 18 Merger, Share Exchange, and Sale of Assets

- a. Any merger or share exchange:
 - (1) That would terminate the SCC status, must be approved by two thirds of the shareholders
 - (2) That would create a SCC status, must be approved by two thirds of the shareholders
- b. Any sale, etc. of substantially all of the property, must be approved by two thirds of the shareholders

Section 19 Termination of Statutory Close Corporation Status

- a. A SCC is terminated by deletion of election of SCC

- in the articles of incorporation
b. Amendment must be approved by two thirds
c. Dissenters' rights for shareholders

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Section 20 Effect of Termination of Statutory Close Corp Status

- a. A Corp. that terminates SCC status is subject to the MBCA or Professional Corp Supp.
b. Upon termination of SCC status, rights of shareholders or Corp under agreement are reserved subject to SCC, MBCA or the law of the state

Section 21 Shareholder Option To Dissolve Corporation

- a. Articles of Incorporation may authorize one or more shareholders to dissolve Corp. at will or specific event.

Notice required

- 31 days after notice - wind-up and liquidation begins
b. Unless provided otherwise, amendment to dissolution provision requires unanimous vote by shareholders

Section 22 Court Action to Protect Shareholders

- a. Right of shareholder to petition court for relief if:
(1) when directors or controlling shareholders act illegally, oppressively, fraudulently, or unfairly to shareholder
(2) when those in control are dead locked in management
(3) there exists grounds for dissolution under the MBCA
b. Jurisdiction is in the district court
c. No petition allowed after agreement in writing to pursue nonjudicial remedy
d. Shareholder with dissenters' rights, must proceed under this section first, before demand of payment under MBCA
e. Rights granted in this section are in addition to other rights or remedies

Section 23 Ordinary Relief

- a. Types granted:
(1) performance, prohibition, alteration or setting aside of action
(2) cancellation or alteration of any provision
(3) removal of director or officer
(4) appointment of director or officer
(5) accounting
(6) appointment of custodian
(7) appointment of provisional director
(8) payment of dividends
(9) award of damages
b. For action in bad faith, court may award attorneys fees, reasonable expenses, etc.

Section 24 Extraordinary Relief: Share Purchase

- a. If ordinary relief is inadequate/inappropriate court may order dissolution unless corp. purchases shares
b. For share purchase, court shall:
(1) determine fair value of shares

- (2) specify terms of the purchase
- (3) require the seller to deliver all the shares
- (4) prevent further action by shareholder
- (5) define time frame before dissolution penalty for non payment
- c. after order, any party may petition for modification
- d. In the event of court dissolution, selling shareholder retains same rights and priorities in corp.'s assets

Section 25 Extraordinary Relief: Dissolution.

- a. Court may dissolve if:
 - (1) there are grounds under MBCA
 - (2) other relief ordered by court
- b. Court may not refuse to dissolve solely because the corp. has accumulated earnings or current operating profits

Section 26 Codification

Section 27 Savings Clause

Section 28 Severability

Section 29 Application to Existing Corporation

- a. Existing corp.'s may elect status

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NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Norma Harris	Helena	X	
Dorrie Jean Curtis	Great Falls	X	
Marjorie	Helena	X	
Steve Walden	Helena Mental Health Center	X	
Cheryl Lindsay	Helena	X	

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546

DATE

Feb. 16, 1987

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NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Jim Nugent	City of Missoula	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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