

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

January 16, 1987

The eighth meeting of the Senate Judiciary Committee was called to order at 10:00 a.m. on January 16, 1987 by Chairman Joe Mazurek in Room 325 of the Capitol Building.

ROLL CALL: All committee members present.

CONSIDERATION OF SB 2: Senator Tom Hager of Senate District #48 told that this bill is the result of the lien law committee. He said physical and occupational therapists will get the benefits in judgments, settlements, and insurance proceeds, as physicians and nurses get.

PROPOSERS: Gary Lusin, licensed physical therapist from Bozeman testified for the bill (see Exhibit 1, written testimony).

Doris Luckman, representing the Joe O. Luckman Physical Therapy, a private practice in Great Falls, testified in support of the bill (see Exhibit 2, written testimony).

Lorin Wright, a physical therapists from Red Lodge, said his practice would improve the cash flow if this bill was a law.

Carol Barnes, physical therapist from Helena, supported SB 2 (see Exhibit 3, written testimony).

Mona Jamison, Montana Chapter of American Physical Therapy Association, felt this was an economic issue and these people should be entitled to reimbursement. She said they are professional medical people just like physicians and nurses. She asked other physical therapists to stand and identify themselves: Mary Mistal, Billings; Clay Edwards, Dillon; Mary Jo Lusin, Bozeman; Charlene Dallec, Great Falls.

Bonnie Tippy, Montana Chiropractic Association, supported SB 2 because these people provided services that should be reimbursed. She presented amendments to the bill (see Exhibit 4). She said these amendments would put all licensed health providers in this bill.

Mike H. Pardis of Helena, represented the Montana Chiropractic Association, explained the amendments (see Exhibit 5, written testimony).

Roger Tippy, Montana Dental Association, said the Dental Association agreed with the amendments from the Chiropractors. He said this extends the purpose of the bill, but does not change it.

OPPOSERS: None

DISCUSSION ON SB 2: Senator Pinsoneault asked what the difference is between occupational and physical therapists. Mr. Lusin responded an occupational therapists deals with daily living activities, such as "motor control" required by a job. He said a physical therapist is licensed to treat the person through the entire body. He said the majority of occupational therapy patients usually have more neurological problems, and physical therapists treat patients more with orthopedic involvement. He said there is a difference, but they do tend to lap over each other in activities.

Senator Crippen questioned why there were no occupational therapists present. He asked if occupational therapists mostly worked in hospitals and if their services are part of the hospital bill. Mr. Lusin said most do work in hospitals but there are some that have their own practice and they don't have lien rights.

Senator Galt asked Senator Hager if he had discussed in his committee the amendment from the Chiropractors. Senator Hager answered that he had just received it. Senator Galt questioned if the Chiropractors or any of the other licensed health care provider, besides the occupational and physical therapists, appeared before Senator Hager's committee. Senator Hager responded none of them did.

Senator Mazurek inquired if any comments were made about any other health care provider besides occupational and physical therapists. Senator Hager replied that counselors were discussed but not put in the bill. Senator Hager commented that one problem the committee faces is some health care providers are licensed and some are not.

Senator Pinsoneault asked if the amendments passed, how many other occupations would be involved. Bonnie Tippy responded that dentists, vets, and dieticians would be the main groups that would come under the amendments and she felt that was not a great amount.

Senator Galt asked what the physical therapists thought of the amendment. Mona Jamison answered she had not seen the amendments and she felt if the word physical therapist is dropped from the bill and "lumped" in as a health care provider it would bring on litigation because the issue becomes who is a health care provider and who isn't. She believed that health care provider is not defined in the codes and so all the groups under "health care provider" will be an undefined word in litigation.

Senator Mazurek commented that the amendment does define "health care provider" as a person licensed under Title 37: to practice one of the healing arts. Senator Hager pointed out occupational therapists are licensed under a different title than physical therapists. He said right now if someone enters the hospital and needs a physical therapist, then does not pay his bill, the doctor, nurse, and hospital can file liens, but not the therapists.

The committee stood at ease until Senator Halligan returned to introduce SB 16.

ACTION ON SB 33: Senator Pinsoneault felt this bill did not add anything to the authority of the sentencing judge and he asked how many merchants want to have someone who had stolen from them working in the store. Senator Crippen asked Valencia Lane about page 3, subsection 6, line 10, of the bill if that was put there because there was some question whether restitution would be made in the event of shoplifting or was that put in there just to add or make it mandatory. Valencia Lane believed the reason was the proponents testified that often the restitution is returning the item, which is usually in a worthless condition. Senator Crippen felt the involuntary servitude requirement should be eliminated.

Senator Mazurek felt enough options were available to the judge under the current law.

Senator Bishop felt the bill was "wide open" in what merchants could do to a shoplifter.

Senator Crippen moved SB 33 be amended:

Page 3, lines 16 through 24 (b)
Strike: Page 3, lines 16 through 24

He felt there is a problem with shoplifting and thought the proponents should have mentioned employee shoplifting. He said that by leaving subsection (a) on page 3, line 10 there, that will make restitution mandatory. He felt most shoplifting is planned and this is a good step in the restitution system and this amendment would eliminate the involuntary servitude problem. Valencia explained that on page 2, line 12 that it makes it only mandatory if the shoplifter can pay for it.

The motion to amend the bill carried unanimously.

Senator Pinsoneault made a substitute motion of DO NOT PASS on SB 33. Senator Pinsoneault felt the authority is already there and he felt it should stay mandatory.

Senator Halligan felt the involuntary servitude portion was wanted by the retail proponents and he said that he knows of no county attorney who will not request restitution.

Senator Crippen stated that he didn't know how many judges granted restitution on the first offense.

The motion carried with Senator Crippen voting no.

CONSIDERATION OF SB 16: Senator Halligan, of Senate District #29, Missoula, introduced SB 16 to the committee. He explained that he

received a letter from Chief Justice Turnage which stated there was a serious problem with the constitutionality of the agister's lien statutes when there is a sale of an individual's property. He said the statute provides for advertisement but no prior notice before the property is sold. Senator Halligan said we can't do that anymore. He pointed out on page 2 and page 3 of the bill that it sets out basic notice provisions that are in most civil procedure statutes (see Exhibit 6).

PROPOSERS: Bob Holding, Montana Association of Realtors, testified in support of SB 16.

OPPOSERS: None.

DISCUSSION ON SB 16: Senator Crippen asked Senator Halligan to explain what an agister is. Senator Halligan replied that if one wants to pasture someone else's livestock and if that owner of the livestock doesn't pay the individual, then in 30 days the individual can put a lien on the livestock. He said one then notifies the sheriff of the situation and he advertises the property to be sold.

Senator Mazurek asked about page 2, line 14 of the bill with concern about the notice. He felt it might be better to give notice and this is how and as long as you give notice, it is ok. He believed it should not be left open to interpretation to whether or not the particular method chosen is the best method. Mary McCue, staff attorney for the interim lien law committee said the person who performs services should have gotten a mailing address and if he did, then we would hope for actual service, but sometimes that can't be accomplished. She said she could see it needed more explaining. Senator Mazurek said that any time one uses the reasonable efforts requirements to find someone, it is subject to challenge.

Senator Bishop stated that anytime you put in "reasonably calculated" in statute you have a built in law suit because what is defined as "reasonable".

Senator Beck asked if one can't find the person to notify them of the sale, can you still sell it. Senator Halligan replied that on page 3, subsection (d) if you can't find the owner then give notice of a public sale in three public places in the county the property is in.

Senator Halligan closed.

CONSIDERATION OF SB 20: Senator Halligan opened the hearing on SB 20 by going through the bill section by section with the committee (see Exhibit 7).

PROPOSERS: Senator Tom Hager, Senate District #48, stated he was on the lien law committee and supported the bill.

Irvin Dellinger, Executive Secretary of the Montana Building Material Dealers Association, Helena, commented that in the interim committee on this subject the Montana Lien Law Coalition, consisting of the Montana Home Builders Association, Montana Contractors Association, Montana Real Mix, National Electrical Contractors Association, Sheet Metal/Air Conditioners, FIB, and Montana Building Material Dealers, met with the subcommittee on liens to discuss this problem. He felt the people will be better alerted about potential liens even though this bill makes more work for the contractors. He handed out an amendment to the committee:

Page 9, line 6.

Following: "contracting owner."

Insert: "if the notice of a right to claim a lien is not given within the 20 day period, the copy must be filed not later than 10 days after the date on which the notice of a right to claim a lien is given."

Riley Johnson, Montana Home Builders, thanked the lien committee that worked on this bill. He handed out an amendment:

Page 12, line 4.

Strike: the entire paragraph, beginning with " WHEN PAYING your contractor. . ."

Page 12, line 10.

Following: "property"

Strike: "."

Insert: ", or make checks payable jointly to the contractor and the firm furnishing services or materials for which you have received a notice of the right to lien."

He explained that if you are a contractor in Cut Bank and you buy your materials in Billings and a person gives a check to you and the supplier, you then have to drive all the way to Billings to get your second signature and then drive back to Cut Bank to put the money in the Bank. He said this amendment takes the "spotlight" off notification. He felt a lien waiver should be the first line of defense.

John Gordon, Kalispell Montana, representing himself, testified in support of the bill but did not agree with the Dellinger amendment.

Brad Walterskirchen, Valley Bank in Kalispell, testified the bill gets rid of the secret lien and that is the main problem. He commented that it will create more work for the lenders because they will have to search public records to see who has filed lien notices. He said if they over look someone that has filed, then their lien is subordinate to the construction lien, so it puts a little more pressure on the lenders. He stated the lenders are willing to go along with the bill because it makes sure no one is over looked. He said he disagreed with the Dellinger

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amendments because if another 10 days are allowed, it gives the lenders 30 days to have to find the filing and it could be up to 60 days before the lenders are aware of the filing and by then the money might be gone. He felt the amendment should include not only notice of a lien given, but the filing.

John Cadby, Montana Banker's Association, commented that like a new car needs tuning, probably so does this bill by the 51st Legislature in two years. He stated the committee should handle this issue carefully, because it took sometime for both sides to balance with this bill. He urge passage of the bill.

Chip Erdmann, Montana League Financial Institutions, testified they will be back in two years if it doesn't work and he felt any amendments to the bill should not go so far as to upset the compromise that was created in the interim liens subcommittee.

JoAnne Peres, of Fort Benton, representing the Clerk and Recorders (MACR), supported the bill because it helps the home owner. She said many homeowners who come to the court house and find out there is a lien on the home are shocked. She said the bill does not upset their current fee structure.

William McCauley, Cut Bank Building Service, supported the bill (see Exhibit 8, written testimony).

Mark Meek, Front Street Glass of Helena, supported the bill because the notices seemed to be the best compromise that was presented. He stated that he has limitable resources to use in getting out these notices, but it was the best of the choices we had to deal with.

John Miller, of Bozeman representing the John Miller Construction, supported the bill in the amended form.

OPPONENTS: None

Senator Mazurek commended both sides for their work.

DISCUSSION ON SB 20: Senator Bishop felt the materials or services given in that first 20 days is not addressed in this bill on secret liens. Mr. Dellinger answered the material delivered today to the contractor, January 16, would not receive his statement until the end of the month, January 31st, and he would have up until the 10th of the next month to pay for that job. He stated that this person did not come in until the 12th of the month and the supplier finds out the bills are not paid for so he contacts the contractor, but the contractor says there is money coming in on the 15th of the month. He said the contractor does

not show up with the money. He said now the supplier has to give notice and it has to date back 20 days from the 15th of February but the materials were delivered on the 16th of January, so the notice probably would not have been given. He said most contractors of small projects said they would give notice the day of the first delivery.

Senator Bishop pointed out he has seen it many times in the past that home owners have no idea there is a secret lien against their property and would like to see in the bill a notice up front before anything is done. Mr. Gordon replied that he agreed and he said the first 20 days was deleted out of the notice because the majority of construction work takes longer than 20 days. He did not agree with the amendment that allows 10 more days to file because it extends the gap of getting money additional 10 days.

Senator Halligan explained that the 20 days was the shortest period used among other states. He said he felt most contractors put their notices out before 20 days are up.

Senator Crippen asked how would one handle pre-payments to a contractor in this bill. He said with this bill the money paid in the front part of the contract is not bothered, it is the back part of the contract that gets you in to trouble.

Senator Mazurek asked Mr. Dellinger to explain his amendment. Mr. Dellinger responded the amendment would allow a notice that is given on the 45th day to the owner to be given a few days extra to file with the clerk and recorder in case something comes up.

Riley Johnson asked that if you go into court, what time is the lien effective 20 days back. He said the mail service or a three day holiday might effect the day, but this does depend on the court's interpretation.

John Gordon believed it was not a necessary amendment because the bill already states that both the lien and filing have to happen somewhere in the 20 day period. He commented it doesn't make any difference when you file because if you don't file it within the first 20 days after you first deliver it, your lien is only good for 20 days before you have given, served and filed.

Senator Mazurek pointed out there is really not a 20 day period in which to give the notice to the owner because giving the notice and filing should start the 10th day, because there might be problems with the delivery of the notice. He asked if this is problem. Mr. Gordon said he does not see the necessity of the amendment because you have a gap period; there is nothing in the statute that says you have to wait until the 20th day. Senator Mazurek felt there should be a "window" between the time the notice is given to the owner and the time you file, so to

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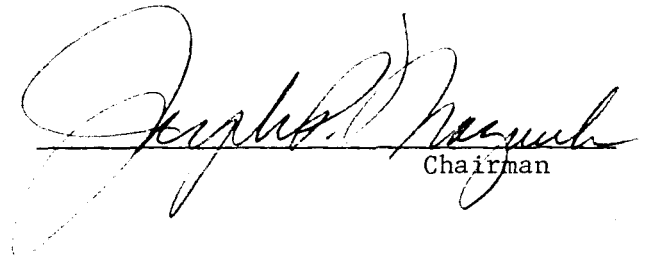
give the owner time to react to the notice. Mr. Gordon said there will not be action from the owner with a notice of intent to lien. He said the reason for filing is documenting for the purpose of the supplier.

Senator Halligan felt there should be some flexibility for legitimate contractors and subcontractors who deal with each other, who don't file their liens because they trust each other.

Mr. Waltherskirchen felt an amendment is needed because there is a search for the ones who didn't pay and his department needs a record of them. He commented if a notice is just given to the contracting owner, we would have no way of knowing, if he forgot to tell us. He said the result is the guy is not going to get paid, and we lose our lien position because we didn't pay the subcontractor. He felt three days is more reasonable than 10 for filing.

Senator Halligan closed by saying this is the best compromise the committee came up with to deal with double payment by the consumer.

The committee adjourned at 11:50 a.m.


Chairman

ROLL CALL

Judiciary

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Jan. 16th 1987

NAME	PRESENT	ABSENT	EXCUSED
<u>Senator Joe Mazurek, Chairman</u>	X		
<u>Senator Bruce Crippen, Vice Chairman</u>	X		
<u>Senator Tom Beck</u>	X		
<u>Senator Al Bishop</u>	X		
<u>Senator Chet Blaylock</u>	X		
<u>Senator Bob Brown</u>	X		
<u>Senator Jack Galt</u>	X		
<u>Senator Mike Halligan</u>	X		
<u>Senator Dick Pinsoneault</u>	X		
<u>Senator Bill Yellowtail</u>	X		

Each day attach to minutes.

VISITORS' REGISTER

SENATE AND HOUSE COMMITTEE

Quid.

BILL

~~SB 2~~ SB 2

DATE

Jan 16

SPONSOR

NAME	REPRESENTING	RESIDENCE	SUPPORT	OPPOS
Charlene Dalbec	Physical Therapists	Great Falls	X	
Mary Jo Surin	Physical Therapists	Bozeman	X	
Mary Mistal, P.T.	Physical Therapists	Billings	X	
Mary Surin	Physical Therapist	Bozeman	X	
Dorish Ackman	Owner Business Mgr	Great Falls	X	
Clay Edwards	Physical Therapist	Deerlorn	X	
Mary Jamison	mt. chapter of American Physical Therapy Assn.	Helena	X	
Lorin R. Wright	Physical Therapists	Red Lodge	X	
Carol Barnes	Physical Therapist	Helena	X	
Don Thomas	Sen. Bob Williams	Helena		
Bonnie Tippy	MT Chiropractic Assn.	Helena	X	
Mike Pauli, D.C.	MT Chiropractic Assn.	Helena	X	
Roger Tippy	MT Dental Assn.	Helena	X (Amend)	
Jan DeLorenz	MBMHA	Helena	X	
Walt Stoddard	UBC	Bozeman	X	
John Swan	Poulsen's	MT Falls	X	
W. DeLorenz	Parliament	Great Falls	X	
Tom Simkins	Simkins Hall	Bozeman	✓	
William L. McInley	Out Bank Building			

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

VISITORS' REGISTER

SENATE AND HOUSE COMMITTEE *Final*

BILL SB20

DATE Jan. 16th

SPONSOR _____

NAME	REPRESENTING	RESIDENCE	SUPPORT	OPPOS
<i>Jeanne Pires</i>	Clerks & Records ^(MACR)	Fort Benton	X	
<i>John CARRY</i>	MT BANKERS	HELENA	X	
<i>Chip Erdmann</i>	MT League Financial Inst	Helena	X	
<i>Riley Johnson</i>	Mont. Home Builders	Helena	X	
<i>John Gordon</i>	myself.	Kalispell	X	
<i>William J. McLawley</i>	Cut Bank Building Svcs	Cut Bank	X	
<i>Kenneth Kuhl</i>	UBC	Helena	X	
<i>Brenda Walters</i>	GREEN VALLEY BANK	Kalispell	✓	
<i>Mike Sether</i>	U.B.C.	Helena	✓	
<i>H S Hanson</i>	MT TECH. COUNCIL	HELENA	✓	
<i>John L. Miller</i>	John L. Miller construction	BOZEMAN	✓	
<i>Allen Rogers</i>	Wood's Building Supply	Conan	✓	
<i>Joyce K Rogers</i>	- - -	-	✓	
<i>Mike Hall</i>	Lawson Townsend Co	Helena	✓	
<i>HAL HAY</i>	INTERMOUNTAIN LUMBER	HELENA	✓	
<i>Jim Moore</i>	Moore Construction	Helena	✓	
<i>Mark Meek</i>	Front Street Glass	Helena	✓	
<i>Mike [unclear]</i>	UBC	Butte	✓	
<i>Erin [unclear]</i>	MBMDS	Helena	✓	
<i>Jack [unclear]</i>	Paulsen Inc.	MT Falls	✓	
<i>Paul [unclear]</i>	Paulsen Inc.	MT Falls	✓	
<i>Bob [unclear]</i>	Mont. Credit Union League	Helena	✓	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

BOZEMAN
PHYSICAL THERAPY CENTER
Suite 703G • Medical Arts Center
300 North Willson
Bozeman, Montana 59715
(406) 587-4501

SENATE JUDICIARY

EXHIBIT NO. 1

DATE Jan. 16, 1987

BILL NO. SB 2

To: Senate Judiciary Committee

Re: Senate Bill 2, An Act Establishing Lien Rights for Physical
Therapists and Occupational Therapists; Amending Sections...

I am a physical therapist from Bozeman, Montana, and have been in practice for five years. Confronted with the demands of a small business, one of which is the endless job of collecting reimbursement for our services, requires as many legal options as possible to assure cash flow. Often our reimbursement comes long after service has been provided and terminated.

Typically we see many patients involved in accidents that result in litigation and we presently have outstanding accounts close to three years old in this category. Our office has over \$4,000 of service already provided that could possibly have been secured by a lien being applied.

I hope you will pass this bill as it stands to help those of us in small business in the field of physical therapy to collect debts owed us for services provided.

Respectfully,

Gary Lusin
dk
Gary Lusin

GL:dk

Gary Lusin, P.T.
Mary Jo Lusin, P.T.

JOE O. LUCKMAN, P.T.
 PHYSICAL THERAPY CONSULTANT
 Great Falls Medical Building
 1220 Central Avenue
 GREAT FALLS, MONTANA 59401

SENATE JUDICIARY

EXHIBIT NO. 2DATE Jan. 16thBILL NO. SB 2

January 16, 1987

TO THE CHAIRMAN AND MEMBERS OF THE SENATE JUDICIARY COMMITTEE:

I am Doris Luckman, co-owner and Business Manager of Joe O. Luckman, P.T., a private practice Physical Therapy office in Great Falls, Montana.

I am here today to ask for your support of Senate Bill 2, entitled "An Act Establishing Lien rights for Physical Therapists and Occupational Therapists".

We feel that people who have been injured seriously enough to need our services and who choose to come to us should expect to pay for the services they ask for and receive.

We are a small business that has operational expenses and it is not fair to be expected to provide service with no protection. We believe that when someone does get a settlement it is only fair for us to be assured of payment for the service they received from us.

At the present time we have approximately twelve patients whose cases have been under litigation for up to three years, during which time we have received no remuneration for treatments given.

We have also had patients who have received settlements which included our balances and have chosen not to pay our bill or to only partially pay it.

Therefore, we feel the need for a legal structure to enable us to file a lien in order to collect outstanding bills when settlements are awarded.

Thank you for your time, attention and consideration of this matter.



Doris Luckman

Helena
Physical
Therapy
Associates

SB 2

Carol Barnes, R.P.T.
Cheryl Hanson, R.P.T.
Kirk Hanson, R.P.T.

2615 Colonial Drive Helena, Montana 59601 406 443-5555

I support the addition of Physical Therapy to the lien bill.
In the past six months, we have filed 11 liens. In one case,
our lien was not honored. The patient was given his settlement,
but we have not received any payment for our services.

Liens allow recourse in court if payments are not made.
Physical Therapists, like MD's and nurses, need the legal
protection that the filing of liens provides.

Thank you.



Carol Barnes
Physical Therapist
Private Practice

SENATE JUDICIARY

EXHIBIT NO. 3

DATE Jan 16th 2011

BILL NO. SB 2

Senate Bill 2, first reading.

1. Amend title, p. 1, line 6
Following: FOR
Insert: all licensed health care providers, including
2. Amend p. 1, line 13
Following: line 12
Strike: Physician, Nurse, Physical Therapist, Occupational Therapist,
Insert: Licensed Health Care Provider
3. Amend p. 1, line 17
Following: for
Strike: physicians, nurses, physical therapists, occupational therapists,
Insert: licensed health care providers
4. Amend p. 1, line 24
Following: line 23
Insert: Section 3. NEW SECTION. Licensed provider defined.
As used in this part, "licensed health care provider"
includes any person licensed under Title 37 to
practice one of the healing arts.
Renumber: following sections
5. Amend p. 1, line 25
Following: of
Strike: physicians, nurses, physical therapists, occupational therapists,
Insert: licensed health care providers
6. Amend p. 2, line 2
Following: a
Strike: physician, nurse, physical therapist, occupational therapist,
Insert: licensed health care provider
7. Amend p. 2, line 5
Following: line 4
Strike: physician, nurse, physical therapist, occupational therapist,
Insert: licensed health care provider
8. Amend p. 2, line 17
Following: a
Strike: physician, nurse, physical therapist, occupational therapist,
Insert: licensed health care provider
9. Amend p. 2, line 25
Following: a
Strike: physician, nurse, physical therapist, occupational therapist,
Insert: licensed health care provider



DR. MIKE PARDIS

Chiropractor

950 N. Montana
Helena, MT 59601

Telephone: (406) 449-7500

SENATE JUDICIARY

EXHIBIT NO. 5

DATE Jan. 16, 1987

BILL NO. SB 2

January 16, 1987

Senate Judiciary Committee

Re: Lien rights for Physical Therapists and Occupational Therapists
(Senate bill #2)

Mr. Chairman and Members of the committee:

My name is Mike Pardis. I'm a chiropractor from Helena, Montana. It is my pleasure to be here to represent the Montana Chiropractic Association. We support Senate Bill #2 in its amended form for the following reasons:

1. As you're probably aware this bill has been submitted in previous years. Two years ago it was killed in committee as it represented only the physical therapy group.
2. This year the bill includes occupational therapists as well as the physical therapists. It seems logical that if a particular profession is licensed by the state it should be able to establish lien rights as well. (ie. Dentists, Chiropractors, Veterinarians, etc.)
3. Everyone likes to have their bills paid. When we, as a professional, perform a service to an individual, we expect to be paid in return. Often a service is performed with the likelihood of recovery from a settlement to which the patient ultimately receives. A lien would establish that right.
4. Currently even a carpenter, plumber, or tradesman has the right to file a lien. If you don't believe me, try hiring one and don't pay him, and see what happens. Shouldn't a professional have that same right?

In summary, if this bill is not passed in its amended form, you can expect the professionals, one after another, to be back up here year after year until they are. Personally, I believe you as a group have more important issues to address you valuable time to.

Sincerely,

Michael H. Pardis, D.C.

Summary of SB 16: "AN ACT REQUIRING NOTICE TO THE OWNER OR PERSON WHO CONTRACTED FOR THE SERVICES OR MATERIALS PRIOR TO A SHERIFF'S SALE OF PROPERTY SOLD TO ENFORCE AN AGISTER'S LIEN OR LIEN FOR SERVICES; AND AMENDING SECTION 71-3-1203, MCA.

Background: This issue was brought the attention of the Joint Interim Subcommittee on Lien Laws when the Montana Supreme Court decided the Rose v. Myers case in August 1986. The appellants sought to declare a sheriff's sale of their horses invalid under the agisters' lien statutes, 71-3-1201 through 71-3-1204, as unconstitutional for failure to provide for notice and an opportunity to be heard prior to deprivation of property.

The statute that provides for enforcement of the lien through sheriff's sale presently states that a person who has not been paid for work or materials he provides with regard to an article or animal left in his possession may enforce his statutory right to a lien through a sheriff's sale. To enforce this possessory lien the lien claimant merely must deliver to the sheriff a statement of the amount of the lien, a description of the property, and the name of the person at whose request the work or materials were furnished. The sheriff then must advertise a sale and sell at public auction an amount of the property sufficient to pay the amount owed.

Problem: In the Rose case the court found that the appellants had actual notice of the sale prior to the sale. Thus the sale was valid as they were aware that their property was in jeopardy and could have prevented the sale by paying the amount owed the agister. But the court called the Legislature's attention to the due process provisions of Article II, section 17, of the Montana Constitution, the Fourteenth Amendment of the U. S. Consitution and their application to the notice provisions of 71-3-1203.

Those provisions are calculated to give notice to the public of an impending sheriff's sale. They do not require that the owner of the property be alerted that his property will be sold to satisfy the agister's lien. Thus he does not have an opportunity prior to the sale to satisfy the lien.

Solution: This bill requires that the sheriff, before he sells the property at public auction, shall give notice of the sale to the owner or person at whose request the work or materials were furnished. The notice must be given at least 10 days before the sale in the manner most reasonably calculated to apprise the owner of the impending sale.

SENATE JUDICIARY

EXHIBIT NO. 6

DATE Jan. 16th, 1987

BILL NO. SB 16

Summary of SB 20: General Revision of Mechanics' Lien Statutes

Present law: Under the literal language of 71-3-501, mechanics' liens are available to any person performing work on or supplying materials for any construction project, regardless of such person's contractual relationship to the owner or prime contractor.

Liens are created by filing with the county clerk, within 90 days after the work has been performed or materials furnished:

- a. a verified description of the property to be charged;
- b. an account of the charges.

The owner may shorten the period of time in which a lien may be filed to 60 days by filing a notice of completion, either when the work has been accepted or 30 days after the cessation of all labor.

The lien attaches to the estate of the person for whose benefit the work was done, i.e., if such person is a mere lessee, to his leasehold only. However, if the leasehold is forfeited (presumably by default) the lien continues to attach to the improvements put in place by the lienholder. The improvements may be sold and removed to satisfy the lien.

As to priorities, the lien attaches to the building on which the work was done in preference to any prior lien or mortgage. The lien attaches to the land and takes priority over existing mortgages if:

- a. the work was done under a contract for the erection of a building or improvement; and
- b. the work was begun before the lien of the mortgage attached (even though the mechanics' lien was only filed later) after completion of the work.

The relative priority of mechanics' liens is by classes:

- a. all liens filed within 30 days of the first lien for work done on the same premises share equally, pro rata, with such first lien;
- b. all liens filed after such 30 days (if within 60 days of the first such lien filed) share equally, pro rata, in any proceeds that remain after all the liens of the first class are paid.

Provisions of SB 20: Who may claim a lien? A person who furnishes services or materials under a real estate improvement contract.

What is the extent of the lien? It extends to the interest of the contracting owner as it existed at the time the work was commenced or was thereafter acquired. As in the present law, if the improvement was to leased premises it attaches only to the lessee's leasehold interest and to the improvement if it can be severed from the property without harming the rest of the property.

What is the amount of the lien? As with the present law, it is for the unpaid portion of the contract price.

What are the requirements for claiming a lien? Except under certain circumstances, the lien claimant must give a notice of a right to claim a lien to the contracting owner within 20 days of first furnishing services or materials. This is a new requirement not presently in the law. The purpose of this notice is to alert the owner that he should protect himself from having to pay any contractor or supplier twice for the same service. The lien claimant also must file a lien not later than 90 days after he finally furnishes services or materials, or 90 days after the owner files a notice of completion under 71-3-512.

For purposes of priority, the lien attaches at the commencement of work on a particular real estate improvement project. Construction lien claimants working on the same real estate project share pro rata in the proceeds of a sale. If their construction liens attached at different times because they worked on different improvement projects they have priority in the order in which work on their particular improvement started.

With regard to priority of construction lien holders as against other claims, the construction lien claimant has priority over any lien filed after the construction lien attached, i.e., the start of the project. A lien filed before the construction lien attaches has priority except if:

- a. the particular improvement may be severed and sold to satisfy the construction lien without damaging the remainder of the property; or
- b. the other lien is for a construction loan, i.e., one given to secure advances to pay for that particular construction project.

I'm William L. McAuley of Cut Bank Bldg
Service of Cut Bank, Montana.

I also am president of the Montana Bldg Material
Dealers Assn.

In the last legislature we were faulted for not having
a change to the lien law that would satisfy us and
the consumer and we charged will coming up with some
thing this session.

McDilligan, the coalition and a group of my
peers along with your ^{very active leg.} ~~sub~~ committee now have what
we feel is a lien law that we can live with

GLACIER

DOOLE

PONDERA

TETON

FRATHEAD.

LIBERTY

CASCADE

We all realize that no one wants to pay twice
for anything but if small business is to exist we need
protection to be paid once. I would ~~would like~~ ^{like} to take a ~~little~~ ^{little} ~~bit~~ ^{bit} ~~for~~ ^{for} ~~the~~ ^{the} ~~workers~~ ^{workers}

My firm's bookkeeping system will be set up to send
out the notifications immediately but being we will be
working with approx 9 different county court houses covering
approx 200 miles it is easy to see why the time element
is as it is. It will be extra work, but if it will get
file paid, the consumer protected lets put a do pass
on Senate bill 20.

SENATE JUDICIARY

EXHIBIT NO. 8

DATE Jan. 16th, 1987

BILL NO. SB 20

NAME: GARY Lusin DATE: 1-16-87

ADDRESS: 300 N. Wilson Bozeman MT 59715

PHONE: 587-4501

REPRESENTING WHOM? Bozeman Physical Therapy Center

APPEARING ON WHICH PROPOSAL: Senate Bill 2

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENTS: Written statement provided

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Doris Luckman DATE: 1/19/57

ADDRESS: 1220 Central Ave.

PHONE: 761-0471

REPRESENTING WHOM? Joe O. Luckman, P.T.

APPEARING ON WHICH PROPOSAL: Senate Bill 2

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENTS: Written statement has been
submitted

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Loanne Pires DATE: 1-15-87

ADDRESS: Fort Benton

PHONE: 622-5151

REPRESENTING WHOM? Clerks & Records (MACR)

APPEARING ON WHICH PROPOSAL: SB-20

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

STANDING COMMITTEE REPORT

January 16

19 57

MR. PRESIDENT

We, your committee on SENATE JUDICIARY

having had under consideration SENATE BILL No. 33

first reading copy (white)
color

RESTITUTION AND SERVICE TO STORE OR COMMUNITY BY SHOPLIFTERS

Respectfully report as follows: That SENATE BILL No. 33

is amended as follows:

1. Title, line 5.

Following: line 4

Strike: "AND SERVICE TO AN ESTABLISHMENT OR THE COMMUNITY"

2. Page 3, line 10.

Following: "(6)"

Strike: "(a)"

3. Page 3, lines 16 through 24.

Strike: subsection (b) in its entirety

DO PASS

DO NOT PASS

.....
Chairman.