

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

February 6, 1987

The twenty-third meeting of the Senate Judiciary Committee was called to order at 10:00 a.m. on February 6, 1987 by Chairman Joe Mazurek in Room 325 of the Capitol Building.

ROLL CALL: All members were present.

CONSIDERATION ON SB 241: Senator Tom Keating of Billings introduced SB 241 see Exhibit 1).

PROPOSERS: Gary Carrell, Department of Justice, supported the bill (see Exhibit 2, written testimony).

Mark Murphy, Attorney General's Office, said the bill expands along the same line as the federal government allows with forfeitures of drug offender's property. He stated the state uses a civil procedure while the federal government usually use a criminal procedure. He felt the bill allows good cooperation between the federal agencies and state agencies that deal with drug trafficking. He felt the bill will allow more enforcement also.

Kevin Olson, Havre Police Department, supported the bill (see Exhibit 3).

OPPOSERS: None

DISCUSSION ON SB 241: Senator Pinsoneault asked if someone is raising marijuana on a 1 acre plot that is part of a 40 acre plot, would the offender have to forfeit over the whole 40 acres. Mr. Murphy said the property that is used in the offense will be taken, but if the rest of the property is found to be used as a concealer, then the law could take all 40 acres. Senator Pinsoneault asked how the department plans to get rid of the property, so the department just doesn't sit with the property. Mr. Murphy said it is treated as a tax seizure and is sold under a tax deed. Senator Pinsoneault questioned on page 2 of the bill that if someone had 300 grams of marijuana, the court could take the car the police stopped the offender in, but if the amount the offender was carrying was only 250 grams, then you could not take the car that he was driving at the time. Mr. Murphy replied that was correct.

Senator Crippen asked what will happen to property that is seized that is jointly owned and the second co-owner doesn't know about the first

one's drug dealings. Mr. Murphy responded that there is an expressed provision that will tell what the outcome will be in every situation. He said the petition must be presented in front of the district court who makes the decision of who was innocent in the drug matter and who should be able to keep what property or not keep the property. He said the primary use of the property has to be innocent from the drug offense. Senator Crippen asked how will the courts handle property that have liens on it before they seized it. Mr. Murphy said the federal law allows the federal government to be substituted as the individual who had to forfeit. He said sometimes liens are used for borrowing money to run the drug operation.

Senator Halligan inquired how this bill really protect the innocent victims who didn't know there was anything going on. Mr. Murphy felt sections in Title 44, part 12, protect innocent lien owners, or rental car owners who rent a car to an offender.

Senator Bishop asked if a mortgage holder, who is not the offender, loses property, can that person buy the property back from the department. Mr. Murphy responded the present procedure in the federal government law is the property will be subject to a sale and if the innocent party shows interest in the property which is of greater value than the property, the property probably will not be seized.

Senator Mazurek asked Senator Keating about page 5, line 12, and an amendment that he mentioned. Senator Keating stated the proceeds would go into a special fund and the money would be appropriated by the legislature. He said this conversation has been going on in the House Appropriation Committee for the last four years. He said many counties have a drug task force funded by the Coal Board, which is running out of money. He said forfeiture will not fund the whole program, but it will help. He said under the forfeiture law it states that any property that is seized and sold the profits go to fund the drug enforcement program. He said the interest from this account will go to the General Fund.

Senator Beck asked what this bill will do to the funds the counties are getting now for this program. Senator Keating said the counties will get funds for their work toward enforcing drug trafficking. He said the counties share enforcement duties with the state. Senator Beck asked if the state can go into a county and investigate drug trafficking or production without the county knowing it. Senator Keating said they can if they choose to but the practice has been to cooperate between the two levels. Mr. Carrell said the state and counties always work together.

Senator Keating said he would work with Valencia Lane on an amendment for page 5, line 12 and if there are any others that might come up.

CONSIDERATION OF SB 223: Senator Dorthy Eck of Senate District #40 in Bozeman introduced SB 223. She said she was asked by Mr. Larry Dodge of Helmsville, Montana to carry this bill, which grants mediators and arbitrators and their clients the same confidentiality that is given to clergy, counselors, physicians, attorneys and their clients. She stated there is a growing number of a new group of people that have skills in mediation and arbitration and who are neither of the above group, but they feel they should have the same confidentiality that we have given to others (the above groups). She pointed out that in Section 2 of the bill it provides the same procedures in the award, or vacating, or modifying grants as under the Uniform Arbitration Act passed last year. She explained this is a small step in developing arbitration or mediation.

PROPOSERS: Senator Eck distributed to the Committee testimony from Larry Dodge (see Exhibit 4).

OPPOSERS: None

DISCUSSION ON SB 223: Senator Pinsoneault asked how Senator Eck is going to limit the scope of having anyone call themselves an arbitrator or a mediator and then get relative information, because this bill allows that. Senator Eck replied that in some cases some people go toward mediation process to get away from the courtroom scene. She thought the largest number of cases handled by mediators are divorce cases and child custody cases. Senator Pinsoneault asked if this bill is allowing every kind of mediation or arbitration that is currently sanctioned under the statute or can any party that arbitrates or mediates be covered under the confidentiality right. He felt this is too broad a concept because it doesn't clearly define what arbitrators or mediators are covered, so a person may voluntarily hire someone that is not under the statute. Senator Eck answered she was not sure exactly where Mr. Larry Dodge wanted to set a limit on who is under the Arbitration Statute or not. She said there is a Christian Conciliation Works group in Billings where an attorney might refer his client to this group and each party names a person to represent them in the mediation. She said the representatives choose a chairman or a 3rd person and this group works on the dispute. She thought a good number of courts have set up their own system of conciliation and some states, by law have set up their own extensive system.

Senator Galt inquired if the new group of arbitrators sent out from the Department of Agriculture are involved in this bill. He said these arbitrators are usually not certified and are just farmers themselves. He stated these arbitrators are likely to go to court on foreclosure cases. Senator Eck said she did not know if they would be covered but she felt they could be considered as the bill stands now.

Senator Mazurek pointed out that under the current statute you can

vacate an award by an arbitrator based upon the fact that the arbitrator exceeded his powers, he acted with partiality or it was procured by fraud or other means. He questioned if that award made by the arbitrator is challenged in court, haven't you precluded the arbitrator from responding to inquiries as to his corruption or partiality or refusal to postpone a hearing. He felt it ties the arbitrator's hands when he can't say what he did or why he said what he did as the bill stands now. Senator Eck responded if they are going to vacate the award for reasons of process, the process should not be covered under the confidentiality. She thought there might not be a need for confidentiality there. She said what would be subject to confidentiality would be the same type of information between an attorney and his client or minister and who he is counseling. Senator Mazurek said a mediator is going to be an independent and in the middle and he felt there was a difference between arbitration and mediation. Senator Mazurek asked an arbitrator, Mr. Bob Jenson, Administrator to the Montana Board of Personnel Appeals, if he sees any problems on the review of awards. Mr. Jenson replied that the mediation and the arbitration functions are very different. He said the mediator conciliates among the parties and does not give written decision. He explained in the labor law area the immunity for the mediator may be more important than the arbitrator because in labor law a complaint that can be filed is an unfair labor practice charge filed by one party against the other. He explained that often times an unfair labor practice charge resorts back to something that might have been said during contract negotiations. He felt this is where the mediator should get immunity. He said an arbitrator issues a final and binding decision. He thought under the Uniform Arbitration Act that is reference to this. He said the review aspect of this by the courts would pertain only to defects in the arbitration procedures. He felt that might be the main reason for overturning an arbitration award. He thought that the arbitrator's hands would not be tied because the arbitrator finishes his part in the form of an award, and then he is done.

Mr. Jenson said the reason why he did not testify is because he did not know if labor law was under this. He said all the definitions and explanations that he has given are from the labor law statutes and he did not know if that applied to every mediation and arbitration rules. Mr. Jenson stated that if the labor law statutes is the same as others than this would be a good bill for arbitration and mediation.

Senator Blaylock asked if there has been a problem with his confidentiality being breeched. Mr. Jenson answered it is very common because many times mediators are subpoenaed and we have to fight to get them out of that situation.

Senator Eck closed by stating she will consult with those who feel this is important and get back to the committee.

CONSIDERATION ON SB 225: Senator Mike Halligan of Missoula introduced SB 225 (see Exhibit 5).

PROPOSERS: Bruce Barrett, University of Montana Attorney, handed out an outline on the bill (Exhibit 6). He said a premarital agreement will solidify the relationship. He said Montana has no law that pretains to a premarital agreement. He said a marriage is a contract no matter what anyone says. He felt two groups of people will benefit from this act. He said the older widower or widow will use this agreement because of remarrying later and wanting to preserve their estate for their first families. He said the second group will be the young professionals because they have waited to get married and probably have more assets than most young married couples that are not established professionally. He said a judge must enforce a premarital agreement because what would be the use of having one if the judge will not even look at it in a divorce case. He said it will be useless, unless the judge takes it seriously. He commented on page 5, section 40-4-202, which is when a judge considers a divorce he has a laundry list of things to look at including premarital agreements. He said the language on that page made the premarital agreement just another factor to look at, so it might not be enforced. He felt the premarital agreement did not need to be recorded at the clerk and recorder's office because of the expense of doing it.

OPPOSERS: None

DISCUSSION ON SB 255: Senator Crippen dreamed up a story about Senator Brown and asked the question of how one can get out of one these agreements. Senator Halligan said section 8 deals with these kinds of situations when one of the partners would like to get out of the agreement. Mr. Barrett gave example of a young farmer's family that made his finance sign one of these agreements, so she will not take the farm if something happens to the marriage. He said the woman might give the best years of her life to this farmer and something goes wrong and she is stuck with the premarital agreement. He said everyone wants to put in escape clause all the time, but this will ruin the credibility of the agreement if there are exceptions. He said the judge must look at the agreement with seriousness. Senator Pinsoneault asked how many other states have adopted this. Mr. Barrett said four states have adopted it.

Senator Halligan closed.

The committee adjourned the hearings for executive action.

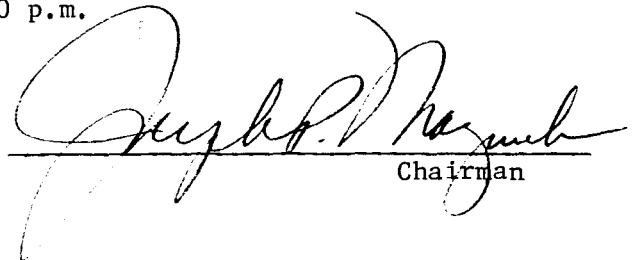
ACTION ON SB 223: Senator Pinsoneault wished Mr. Dodge was more specific in his letter. Senator Galt stated there are quite a few unlicensed arbitrators running around in the agricultural departments. Senator Galt felt these arbitrators were not that well trained in their field. Senator Brown wondered if these groups of arbitrators and mediators deal

with both sides of a dispute because if they do then things are probably being said that should not be from both sides. The committee decided to wait on the bill and send it to the law school to see what they had to say about this issue. Senator Pinsoneault moved to TABLE the bill. The motion CARRIED.

ACTION ON SB 241: Senator Blaylock felt there should be clearer language dealing with the innocent parties who might be involved in this kind of forfeiture. Senator Pinsoneault thought the committee should have more faith in the court system when it comes to innocent parties. Senator Blaylock asked if the authorities could take away a rented apartment from the owner because a tenant was growing marijuana in it. Senator Mazurek said if a person buys cattle with drug money, the cattle are forfeited to the authorities. The committee decided to wait.

ACTION ON HB 21: Valencia gave the committee amendments (see Exhibit 7). Mike Males also gave the committee the bill with his amendments in it (see Exhibit 8). Senator Crippen agreed with Mr. Males about the 20 year old home owner being able to drink. Senator Crippen said agreed with Males on the whole bill. Senator Mazurek asked how many wanted to just pass the bill with the technical amendments that Valencia gave the committee. The straw vote was three to seven. Valencia said the federal law is worried about the possession of alcohol and in Males's bill he fines a person under the age of 18 a \$50 fine for possession. Senator Crippen asked how many other states have Males's kind of law. Senator Yellowtail said Wyoming and North Dakota have this. Senator Mazurek asked Valencia to look at the federal rule on the drinking age and see if Mr. Males's bill could fit in.

The committee was adjourned at 12:00 p.m.


Chairman

ROLL CALL

Judiciary

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Feb. 6

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.

DATE Feb. 6

COMMITTEE ON

VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)

SUMMARY OF SB241 (KEATING)

(Prepared by Senate Judiciary Committee staff)

SB241 is by request of the Department of Justice. This bill revises and clarifies the laws relating to seizure and forfeiture of items related to dangerous drug offenses. This bill broadens the scope of application of the law as to what items are subject to forfeiture. Under current law, one of the things that forfeiture applies to is "everything of value furnished or intended to be furnished in exchange for dangerous drugs, all proceeds traceable to such a exchange, and all money, negotiable instruments, and securities used or intended to be used to facilitate" a crime involving dangerous drugs. Under this bill, the above category is broadened to include real or personal property :: (a) acquired, maintained, or produced by means of or as a result of a dangerous drugs violation: (b) constituting or derived from proceeds obtained directly or indirectly by a dangerous drugs violation; or (c) that assisted, facilitated, or was used or intended for use in the commission of a dangerous drugs violation.

This bill also provides that a portion of the proceeds of items seized through the efforts of state employees shall go to the state in a special revenue fund and be statutorily appropriated to the attorney general for purposes of drug laws enforcement and education concerning drugs. Under current law, only local government law enforcement agencies receive a portion of the forfeiture proceeds.

C:\LANE\WP\SUMSB241.

My name is - - - -

Speaking as a proponent

We feel expansion of the forfeiture statute to include real and personal property is an important element in the efforts of law enforcement agencies at the city, county, and state level's ability to address the supply side of the drug abuse problem in our state.

Some of these drug traffickers are reaping huge tax free profits - and it presents a problem for them - what to do with their money.

If they use those profits to acquire, or maintain ~~personal~~ real property - it could be ^{forfeited} ~~seized~~ if this Bill is passed.

If they use real property to produce illegal substances it could be forfeited.

This Bill also allows the state to receive and spend ^{a share of} drug forfeiture money if we are involved in the case. - We have agents who have worked dangerous drug investigations for a number of years - but there ~~state~~ is currently no provision for the state to receive a share of any money generated as a result of those investigations.

Additionally it provides a method of distributing forfeitures when more than one law enforcement agency participates in ~~an investigation~~ a case.

This is almost always the case - as it should be - Most drug investigations originate at the local level. However the investigation usually, within a short period of time, reveals that the individual(s) involved move across jurisdictional boundaries. At that point the original agency would normally contact a law enforcement agency in a neighboring county or the state.

* Under federal law, the U.S. Attorney determines the proportion of proceeds.

The amount of money ~~generated~~ forfeited depends on the resources available to work the problem.

Legal & illegal
items seized

In most cases, in order to seize substantial amounts from the individuals doing this on a regular basis, it takes a substantial amount of time and requires personnel assigned specifically to that function.

Right now I believe we have approx. 12 or 13 police officers, deputy sheriffs, and CIB agents assigned exclusively to drug enforcement in the entire state.

This is an excellent and I believe necessary tool. - But we can have a shop full of very functional tools - and the work doesn't get done if there are few people to use them.

CHAIRMAN MUZERK,

SENATE JUDICIARY

EXHIBIT NO. 3

DATE FEB 6, 1987

BILL NO. SB 241

My NAME IS KEVIN OLSON, I AM A POLICE OFFICER FOR THE CITY OF HAURE AND AM HERE TODAY REPRESENTING THE HAURE POLICE DEPT. AND THE MONTANA POLICE PROTECTIVE ASSOCIATION.

I AM HERE TO ENDORSE AND FULLY SUPPORT SENATE BILL 241 INTRODUCED BY SENATOR KEATING.

PART OF THIS BILL WOULD ENABLE ANY LAW ENFORCEMENT AGENCY THAT PARTICIPATES IN A DRUG INVESTIGATION TO SHARE IN THE PROCEEDS THAT RESULT FROM FORFEITURES AND SEIZURES.

THE CRIMINAL INVESTIGATION BUREAU HAS BEEN AN INVALUABLE RESOURCE IN THE PAST 3 YEARS FOR THE HAURE POLICE DEPT., NOT ONLY IN DRUG INVESTIGATIONS BUT ALSO IN ASSISTING IN INVESTIGATING OTHER SERIOUS CRIMES.

I HAVE BEEN COORDINATING DRUG INVESTIGATION FOR THE HAURE POLICE DEPT. FOR THE PAST 3 YEARS.

DURING THIS TIME, THE HAURE POLICE

DEPT. AND HILL COUNTY SHERIFF'S DEPT.
HAVE CREATED A DRUG TASK FORCE TO
COMBAT DANGEROUS DRUG CRIMES IN THE
HAURE - HILL COUNTY AREA.

WITH THE CREATION OF THIS TASK
FORCE, THE CRIMINAL INVESTIGATION
BUREAU WAS CALLED UPON FOR
ASSISTANCE AND ADVICE.

AFTER ~~SEVERAL~~ NUMEROUS TRIPS TO HAURE BY
THE CRIMINAL INVESTIGATION BUREAU,
WE MADE SEVERAL ARRESTS OF PERSONS
SELLING AND DISTRIBUTING DANGEROUS
DRUGS.

AS A RESULT OF THESE ARRESTS,
SOME MONIES AND PROPERTY WAS
WERE SEIZED AND FORFEITED.

HOWEVER, DUE TO CURRENT STATE LAW,
THE CRIMINAL INVESTIGATION BUREAU
COULD NOT SHARE ANY OF THESE PROCEEDS
OF THESE SEIZURES, EVEN THOUGH
THEY PLAYED A VITAL ROLE IN MAKING
THESE CASES SUCCESSFUL.

AS A RESULT OF INVESTIGATING DANGEROUS
DRUG CRIMES AS A MEMBER OF A
SMALLER POLICE DEPT., WE HAVE
EXPERIENCED SOME PROBLEMS THAT

HAVE BEEN DIFFICULT TO OVERCOME.

ONE, FINANCING THESE TYPE OF INVESTIGATIONS.

TWO, TRYING TO GET WELL QUALIFIED AND EXPERIENCED PERSONAL TO ASSIST.

WITH THE PASSAGE OF THE DRUG FORFEITURE AND SEIZURE LAWS IN 1983, WE HAVE FOUND NEW WAYS TO HELP ADVANCE DRUG INVESTIGATIONS.

THIS BY TAKING PROFITS AND PROCEEDS THAT CRIMINALS HAVE ACCUMULATED AS A RESULT OF PARTICIPATING IN THE SALE AND DISTRIBUTION OF DANGEROUS DRUGS.

WITH THE PASSAGE OF THIS BILL, I FEEL THAT OBTAINING ASSISTANCE FROM OTHER AGENCIES WILL BECOME EASIER BECAUSE NOW THESE OTHER AGENCIES CAN SEE A DIRECT FINANCIAL ADVANTAGE IN COORDINATING THEIR EFFORTS WITH ONE ANOTHER.

IT WOULD ONLY MAKE GOOD REASONABLE SENSE TO ALLOW ALL AGENCIES PARTICIPATING IN THESE TYPE OF

INVESTIGATIONS, TO SHARE IN THE
PROCEEDS ACCUMULATED FROM THESE
INVESTIGATIONS.

THANK YOU FOR YOUR TIME AND
CONSIDERATION IN REGARDS TO THIS
BILL

I WOULD BE HAPPY TO TRY
TO ANSWER ANY QUESTIONS YOU
MAY HAVE.



KEVIN OLSON

HAURE POLICE DEPT.

MONTANA POLICE PROTECTIVE ASSOC.

Senate Bill No. 223

February 6, 1987

To the Chairman and Members of the Senate Judiciary Committee:

I believe that communications between arbitrators and mediators and their clients should enjoy the same protection of confidentiality as that between clergy, attorneys, and physicians and their clients.

Morally speaking, the rationale is identical: people who seek private adjudication of disputes are usually trying to cooperate in order to get all the facts on the table in front of a neutral third party. This requires a degree of trust that cannot be had in the adversarial situation of the public courtroom, where "winner take all" is the rule, and compromise is the exception. Betrayal of trust, then, is the moral issue and SB223 seems a worthy attempt to protect that trust.

Constitutionally SB 223 reinforces our rights to privacy and access to justice. Arbitrated and mediated settlements may themselves be matters of public record, and enforceable as such, but the facts and testimonies are not. For many, the attraction of private adjudication is precisely that one needn't expose the details of his private life to public scrutiny in order to settle a dispute. To leave communications between dispute resolvers and their clients vulnerable to exposure invades personal privacy and limits access to justice to those unwilling to take such risks.

Practically, anything providing incentives for people to seek private alternatives to government services surely deserves consideration in these times of budget deficits. By insuring confidentiality of communications in private dispute resolution, and by expanding the range of cases which may be settled by arbitrators and mediators, SB 223 may help to relieve some of the pressure on our

public courts and thus, ultimately, their expense to the counties and the state.

Sincerely,

Larry Dodge
Helmville, MT

SUMMARY OF SB225 (HALLIGAN)

(Prepared by Senate Judiciary Committee staff)

SB225 adopts the Uniform Premarital Agreement Act. Section 1 defines "premarital agreement" as an agreement between prospective spouses made in contemplation of marriage and to be effective upon marriage. The agreement must be in writing, signed by both parties, and becomes effective upon the marriage of the parties. The act does not deal with agreements between persons who live together but who do not contemplate marriage or who do not marry and it does not provide for postnuptial or separation agreements or oral agreements.

Section 8 of the Act sets forth the conditions under which a premarital agreement is not enforceable. An agreement can not be enforced if it was not voluntary or is unconscionable. If an agreement modifies or eliminates spousal support and that modification or elimination would cause a party to be eligible for support under a public assistance program at the time of separation, dissolution, or death, a court is authorized to order the other party to provide support to the extent necessary to avoid that eligibility.

COMMENTS: None.

C:\LANE\WP\SUMSB225.

UNIFORM PREMARITAL AGREEMENT ACT

Main points

I. Status of Pre-marital Agreements in Montana

- a. Virtually no case law
- b. Montana "Divorce" Laws require judge to consider Pre-nuptial agreements, but gives them no more weight than any other factor. (MCA 40-4-202(1)).
- c. No predictability for enforcement of agreement, difficulties in tax, estate, and other planning.

II. Parties Benefiting From Act

- a. Older parties entering 2nd marriage seeking to protect & preserve their estate for their first family
- b. Educated professionals who wish predictability and to formalize their economic relationship.

III. Major Points Of The Act

- a. Allows Agreements
- b. Agreement May Be Amended By Parties During Marriage
- c. Requires Judge To Observe Agreement, Agreements difficult to overturn
- d. Though agreements will not be common, those who choose one will be given certainty & predictability

TESTIMONY OF BRUCE BARRETT, ATTORNEY
1945 McDonald
Missoula, MT 59801 542-2563/243-6213

HB 21 PROPOSED AMENDMENTS

1. Page 1, line 15 through line 23, page 6.
Strike: sections 1 through 5 in their entirety
Renumber: subsequent sections
2. Page 12, line 5 through line 10, page 17.
Strike: sections 11 through 16 in their entirety
Renumber: subsequent sections
3. Page 17, line 21.
Following: line 20
Insert: "NEW SECTION. Section 8. Applicability. The provisions of this act do not apply to persons who were born on or between April 1, 1966, and April 1, 1968."
4. Page 17, line 21.
Following: "Effective"
Strike: "dates"
Insert: "date"
Following: "--"
Insert: "contingent"
5. Page 17, line 22.
Following: "termination"
Insert: "date"
6. Page 17, lines 22 through line 2, page 18.
Following: "(1)" on line 22
Strike: the remainder of line 22 through line 2, page 18
Insert: "This act is effective April 1, 1987."
Renumber: subsequent subsection
7. Page 18, line 3.
Following: "IF THE"
Insert: "United States Congress repeals or removes or the"
8. Page 18, line 9.
Following: "MONTANA."
Strike: the remainder of line 9
Insert: "this act terminates on the date of such"

PROPOSED HB 21 (MALS)

A BILL FOR AN ACT ENTITLED: "AN ACT RAISING THE LEGAL DRINKING AGE FROM 19 TO 21; ALLOWING THOSE PERSONS OF LEGAL DRINKING AGE TO CONTINUE TO DRINK; RETURNING THE LEGAL DRINKING AGE TO 19 IF THE UNITED STATES CONGRESS OR SUPREME COURT INVALIDATES THE PROVISION OF FEDERAL LAW REQUIRING STATES TO RAISE THE AGE TO 21 OR LOSE A PORTION OF FEDERAL HIGHWAY FUNDS; AMENDING SECTION 45-5-624, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 45-5-624, MCA, is amended to read:

"45-5-624. Unlawful possession of an intoxicating substance -- interference with sentence or court order -- purchase or possession of alcohol by persons age 19 to 21. (1) A person under the age of 18 years commits the offense of possession of an intoxicating substance if he knowingly has in his possession an intoxicating substance other than an alcoholic beverage. A person under the age of 19 commits the offense of possession of an intoxicating substance if he knowingly has in his possession an alcoholic beverage, except that he does not commit the offense when in the course of his employment it is necessary to possess alcoholic beverages.

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

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

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

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

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

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

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

(5) A person over 19 but under 21 years of age who was born after April 1, 1968, commits the offense of unlawful possession of an alcoholic beverage by a person over 19 if he knowingly purchases or possesses in a public place an alcoholic beverage and, upon conviction, shall be fined not to exceed \$5, except that possession of an alcoholic beverage pursuant to employment is lawful."

Section 2. Section 45-5-624, MCA, is amended to read:

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

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

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

(4) A person commits the offense of interference with a sentence or court order if he purposely or knowingly causes his child or ward to fail to comply

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

NEW SECTION. Section 4. Repealer. Sections 1 and 2 of this act are repealed.

NEW SECTION. Section 5. Extension of authority. Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

NEW SECTION. Section 6. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 7. Effective dates -- termination. (1) Sections 1, 5, 6, and this section are effective April 1, 1987, and section 1 terminates April 1, 1989.

(2) Section 2 is effective April 1, 1989.

(3) If the United States Congress or Supreme Court invalidates the provisions of federal law that require states to raise the legal age for purchasing and publicly possessing alcoholic beverages to 21 as a condition of full receipt of federal highway funds, the governor of Montana shall immediately certify to the fact of the invalidation to the secretary of state of Montana. Sections 3 and 4 are effective upon certification.

- End -

Proposed by:

Mike A. Males
528 N. F Street
Livingston, MT 59047
Tel. 222-3398

SENATE JUDICIARY

EXHIBIT NO. 8

DATE 2-6-87

BILL NO. H.B. 21

NAME: KEVIN O'CONNOR DATE: 2-6-87

ADDRESS: # 520 4th ST. HAVER, MT 59507

PHONE: 265-4361

REPRESENTING WHOM? HAVER POLICE DEPT + MONTANA POLICE
PROTECTIVE ASSOC.

APPEARING ON WHICH PROPOSAL: SB 241

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

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SUMMARY OF SB223 (ECK)

(Prepared by Senate Judiciary Committee staff)

SB223 revises the law relating to arbitration procedures. This bill establishes a privilege from examination in civil proceedings for arbitrators and mediators. It provides that a mediator or arbitrator cannot be examined in a civil action as to any communication made by a party to him during the course of the mediation or arbitration. The bill also provides that any arbitration award can only be reviewed as provided in the Uniform Arbitration Act, whether the arbitration was conducted pursuant to that Act or not.

COMMENTS: None.

C:\LANE\WP\SUMSB223.

NAME: MARK J MURPHY DATE: 2/6/87

ADDRESS: 3840 Kik, Dr
HELENA

PHONE: 444-3816

REPRESENTING WHOM? ATTORNEY GENERAL'S OFFICE

APPEARING ON WHICH PROPOSAL: SB 241

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

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME :

DATE: 2/4/82

ADDRESS :

PHONE :

REPRESENTING WHOM?

APPEARING ON WHICH PROPOSAL:

DO YOU:

SUPPORT?

AMEND?

OPPOSE?

COMMENTS :

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: MIKE GREELY DATE: 2/6/87

2/6/87

ADDRESS: 215 N SANDERS HELENA

PHONE: 444-2026

REPRESENTING WHOM? DEPT OF JUSTICE

APPEARING ON WHICH PROPOSAL: SB 241



AMEND?

OPPOSE?

COMMENTS:

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.