

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dave Brown, on January 19, 1989,
at 8:10 a.m.

ROLL CALL

Members Present: All members were present with the
following exception:

Members Excused: Rep. Gould due to illness

Members Absent: None.

Staff Present: Julie Emge, Secretary
John MacMaster, Legislative Council

Announcements/Discussion: None.

HEARING ON HOUSE BILL 112

Presentation and Opening Statement by Sponsor: Due to Rep.
Gould's illness, Rep. Eudaily presented HB 112 to the
Committee. Rep. Eudaily, House District 16 stated that
HB 112 will correct the problem in the current code by
clarifying the definition of the term "conviction".

List of Testifying Proponents and What Group They Represent:

Peter Funk, Department of Justice

List of Testifying Opponents and What Group They Represent:

Michael Sherwood, Montana Trial Lawyers Association

Testimony:

Peter Funk, in favor of HB 112 stated that at the current
time we have two different definitions of the term
"conviction" within the motor vehicle code. Shown as
EXHIBIT 1, Mr. Funk presented to the Committee a copy
of the definitions of the word "conviction" that are
presently within the motor vehicle code. He stated
that it is quite clear that the word conviction means
one of three things: 1.) Person has been found

guilty; 2.) Person has plead guilty; 3.) Person has forfeited bail or bond. Mr. Funk continued by stating that there are two words in the statute which cause significant problems. The words "final conviction". There is no definition for final conviction in the Montana Criminal Code nor in the Case Laws of Montana.

Michael Sherwood, in opposition to HB 112 stated that when someone is convicted in a lower court, and it is appealed, it automatically stays. When there is a conviction that is appealed, it too is an automatic stay. Mr. Sherwood commented that with this bill, if a person should be convicted in a lower court, that stay would no longer be enacted.

Questions From Committee Members: None.

Closing by Sponsor: Rep. Eudaily closed.

DISPOSITION OF HOUSE BILL 112

Motion: None.

Discussion: None.

Amendments and Votes: None.

Recommendation and Vote: Close the hearing on HB 112. No action taken.

HEARING ON HOUSE BILL 146

Presentation and Opening Statement by Sponsor: Rep.

Strizich, House District 41 stated that HB 146 simply amends the statute to allow criminal justice students as well as other qualified individuals who are not law enforcement officers the ability to attend the Montana Law Enforcement Academy prior to being hired by an agency.

List of Testifying Proponents and What Group They Represent:

Clayton Bain, Executive Director of the Montana Peace
Officers Training
Peter Funk, Department of Justice

List of Testifying Opponents and What Group They Represent:

None.

Testimony:

Clayton Bain, in support of HB 146 submitted to the Committee a written testimony presented as EXHIBIT 2.

Peter Funk, on behalf of the Attorney Generals Office voiced support of HB 146 as well as supporting the comments and points of interest presented by Mr. Bain.

Questions From Committee Members: Rep. Brooke, referring to line 17 where it states "other individuals" questioned Rep. Strizich as to clarification. Rep. Strizich commented that the Post Council has the authority to set the standards for making the rules for qualification and consideration of those that will attend the academy. It is those same qualifications and standards that are set by the Council that are used for the individuals that are applying with the academy.

Rep. Hannah questioned Mr. Bain as to if there would be any differential in the fees, if for example someone from the Yellowstone County Sheriff's Dept. as opposed to a private student enrolling in the academy. Mr. Bain stated that the private student would be paying the total cost whereas someone who is already a sworn officer would be responsible for everything aside from the tuition, which would be paid for by the State.

Rep. Hannah continued by asking Mr. Bain how he would view a provision in the bill to reinstate the private student who went to the academy on their own and then was hired as an officer. He feels they should be paid back for the cost that the State picks up for their officers. Mr. Bain's personal opinion that it is the individuals responsibility.

Rep. Daily recommended a fiscal note or actual data from the fiscal analysts office as to what the cost of the academy is.

Rep. Brown questioned the collection of the \$1,000.00 that would be charged to a private individual if it would have to be collected by statutory authority. Mr. Bain stated that it is the Attorney General who writes the rules and Mr. Funk commented that he felt the Dept. of Justice would be comfortable in doing so as it states in the tuition section in the Administrative Rules.

Closing by Sponsor: Rep. Strizich closed.

DISPOSITION OF HOUSE BILL 146

Motion: None.

Discussion: None.

Amendments and Votes: None.

Recommendation and Vote: Close the hearing on HB 146.

HEARING ON HOUSE BILL 135

Presentation and Opening Statement by Sponsor: Rep. Mercer, House District 50 in reference to tort reform statutes stated that historically tort laws have gone from being criminal laws to compensatory laws. Rules under the current laws of Montana, if a person dies instantaneously they don't have survivorship action. Rep. Mercer also stated that tort laws are supposedly based on fault of negligence or an intentional action. There has been a trend from negligence and fault to no fault at all, therefore it is very complicated for the courts to fine the injured party regardless of fault. The state has a right to be compensated.

List of Testifying Proponents and What Group They Represent:

Michael Sherwood, Montana Trial Lawyers Association

List of Testifying Opponents and What Group They Represent:

None.

Testimony:

Michael Sherwood spoke in favor of HB 135 as he feels the statutes in the law are beneficial and submitted to the committee for review proposed amendments to HB 135 shown as EXHIBIT 3.

Questions From Committee Members: Rep. Boharski questioned Rep. Mercer if the language in the bill does not apply to non-economic loses or does this section of the law only cover economic loses? Rep. Mercer responded by stating that it covers any type of loss that can be proven. Rep. Boharski continued by asking if a person went into court as the way the law is presently written and tried to sue for pain and suffering under instantaneous death, does that person have to prove their pain and suffering? Rep. Mercer stated that a case such as Rep. Boharski mentioned would not even get

to court. If that person acknowledged that the death was instantaneous there would be no case as you cannot create a case and prove pain and suffering.

Rep. Eudaily questioned the effective date on this particular bill. If this bill should pass, shouldn't it become effective as soon as possible rather than waiting until October 1 to enact it. Rep. Mercer stated that he would not have any objections to changing the effective date.

Closing by Sponsor: Rep. Mercer closed.

DISPOSITION OF HOUSE BILL 135

Motion: A DO PASS motion was made by Rep. Mercer, seconded by Rep. Eudaily.

Discussion: Rep. Boharski reiterated his above mentioned questions to Rep. Mercer.

Amendments and Votes: None.

Recommendation and Vote: The DO PASS motion was voted upon and CARRIED with Rep. Boharski voting No.

HEARING ON HOUSE BILL 122

Presentation and Opening Statement by Sponsor: Rep. Spaeth, House District 84 stated that this bill requires a personal representative of an estate to give actual notice to creditors that are recently ascertainable. Rep. Spaeth briefly talked about probate procedures as a simple process. When a person establishes or files a probate, the letter is issued to the administrator of the estate and it is published three times, once per week along with a list of creditors in the local newspaper. Within four months after that period of time the creditors must file for their claims. In the State of Montana, under the uniform probate code they are trying to establish a statute of limitations. Rep. Spaeth made reference to the United States Supreme Court decision of the Tulsa Professional Collection Services, Inc. vs. Joanne Pope listed as EXHIBIT 4.

List of Testifying Proponents and What Group They Represent:

None.

List of Testifying Opponents and What Group They Represent:

None.

Testimony:

Testimony made by Rep. Spaeth in opening statement.

Questions From Committee Members: Rep. Mercer questioned Rep. Spaeth as to if this was part of the equal improvement group or it is part of the uniform grouping code. Rep. Spaeth stated that this has been forwarded on to the probate section and would like to see this bill approved when the uniform language has been introduced.

Closing by Sponsor: Rep. Spaeth closed.

DISPOSITION OF HOUSE BILL 122

Motion: None.

Discussion: John MacMaster reviewed with the committee proposed amendments to be introduced with HB 122.

Rep. Mercer stated that there are two serious problems with the adoptions to the statute: 1.) It is not uniform with the present uniform probate code, and 2.) They need to specify requirements. There is a tremendous burden on the State, which is really a burden on the survivors to find everyone who is a known creditor and reasonably ascertainable. Rep. Mercer feels that the uniform probate people should be allowed to recommend changes and establish what the proper conditions should be rather than leave it up to the opinion of the State.

Rep. Brown recommended that HB 122 be temporarily pulled off of the Executive list so as the uniform code people could be contacted for information or additional language that may be helpful.

Amendments and Votes: None.

Recommendation and Vote: Remove HB 122 from the Executive Action list. No action or votes taken on HB 122.

DISPOSITION OF HOUSE BILL 146

Motion: Rep. Strizich made a DO PASS motion, seconded by Rep. Wyatt.

Discussion: Rep. Daily recommended that a fiscal note be introduced regarding the cost.

- Rep. Strizich responded by stating that the idea of this bill will not cost the state any money, therefore he does not see the point of a fiscal note. He feels that if the cost of the academy is too much for a private student, they simply won't attend.
- Rep. Hannah, in agreement with Rep. Strizich stated that he has some problems in his own mind as they relate to proper public policy. Rep. Hannah offered an amendment so as the bill would make sure that the cost of the training would be paid by the other individuals. Continuing, Rep. Hannah would also like to see in Sub-section 2 that once training has been passed in the Montana Training Academy, the law enforcement department that hired this person would be responsible for reimbursing the employee for the cost that was incurred for taking that course.

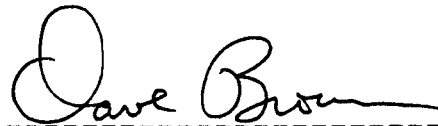
Amendments and Votes: A motion was made on Rep. Hannah's above mentioned amendments and seconded by Rep. Brown. After some discussion Rep. Brown withdrew his second to Rep. Hannah's motion, and was then seconded by Rep. Daily. A vote was taken on the proposed amendments and FAILED with Reps. Daily, Brown, and Hannah voting aye.

- Rep. Brooke offered an amendment shown as EXHIBIT 5, seconded by Rep. Strizich.
- Rep. Nelson questioned the word "qualified" in the proposed amendments of Rep. Brooke's. Rep. Brooke commented that the word "qualified" is echoed throughout the bill, which leads her to assume that there is a qualifying factor that is already being considered.
- Rep. Brown pointed out that on page 3, lines 3-4 under the eligibility criteria, that it basically states that the qualified person will be determined by whatever the Dept. of Justice deems qualified means. Rep. Brown stated that he feels that the point of this bill is to allow those people access into a system that they are not presently allowed to enter whether or not their end result is to be a police officer or whether it is to go to work for a different law enforcement division that requires the training of the academy.
- A vote was taken on Rep. Brooke's amendment and the motion CARRIED with Reps. Nelson, Eudaily, Hannah, and Wyatt voting No.

Recommendation and Vote: Rep. Hannah motioned DO PASS AS
AMENDED, motion seconded by Rep. Wyatt. A vote was
taken and CARRIED with Rep. Daily voting No.

ADJOURNMENT

Adjournment At: 10:02 a.m.

A handwritten signature in cursive script that reads "Dave Brown". The signature is written in dark ink and is positioned above a dashed horizontal line.

REP. DAVE BROWN, Chairman

DB/je

1608.min

DAILY ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date JAN. 19, 1989

NAME	PRESENT	ABSENT	EXCUSED
REP. KELLY ADDY, VICE-CHAIRMAN	X		
REP. OLE AAFEDT	X		
REP. WILLIAM BOHARSKI	X		
REP. VIVIAN BROOKE	X		
REP. FRITZ DAILY	X		
REP. PAULA DARKO	X		
REP. RALPH EUDAILY	X		
REP. BUDD GOULD			X
REP. TOM HANNAH	X		
REP. ROGER KNAPP	X		
REP. MARY McDONOUGH	X		
REP. JOHN MERCER	X		
REP. LINDA NELSON	X		
REP. JIM RICE	X		
REP. JESSICA STICKNEY	X		
REP. BILL STRIZICH	X		
REP. DIANA WYATT	X		
REP. DAVE BROWN, CHAIRMAN	X		

STANDING COMMITTEE REPORT

January 19, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that HOUSE
BILL 135 (first reading copy -- white) do pass .

Signed: 
Dave Brown, Chairman

STANDING COMMITTEE REPORT

January 19, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that HOUSE BILL 146 (first reading copy -- white) do pass as amended.

Signed: 
Dave Brown, Chairman

And, that such amendment reads:

1. Page 1, line 17.
Following: "and other"
Insert: "qualified"

61-11-203

MOTOR VEHICLES

596

(2) impose increased deprivation of the privilege to operate a motor vehicle upon these persons.

History: En. 31-176 by Sec. 2, Ch. 362, L. 1974; R.C.M. 1947, 31-176.

Cross-References

Revocation, suspension, or cancellation of licenses, Title 61, ch. 5, part 2.

61-11-203. Definitions. As used in this part, the following definitions apply:

(1) "Conviction" means a finding of guilt by duly constituted judicial authority, a plea of guilty, or a forfeiture of bail, bond, or other security deposited to secure appearance by a person charged with having committed any offense relating to the use or operation of a motor vehicle which is prohibited by law, ordinance, or administrative order.

(2) "Habitual traffic offender" means any person who within a 3-year period accumulates 30 or more conviction points according to the schedule specified in this subsection:

(a) deliberate homicide resulting from the operation of a motor vehicle, 15 points;

(b) mitigated deliberate homicide or negligent homicide resulting from operation of a motor vehicle, 12 points;

(c) any offense punishable as a felony under the motor vehicle laws of Montana or any felony in the commission of which a motor vehicle is used, 12 points;

(d) driving while under the influence of intoxicating liquor or narcotics or drugs of any kind or operation of a motor vehicle by a person with alcohol concentration of 0.10 or more, 10 points;

(e) operating a motor vehicle while his license to do so has been suspended or revoked, 6 points;

(f) failure of the driver of a motor vehicle involved in an accident resulting in death or injury to any person to stop at the scene of the accident and give the required information and assistance, as defined in 61-7-105, 8 points;

(g) willful failure of the driver involved in an accident resulting in property damage of \$250 to stop at the scene of the accident and give the required information or to otherwise fail to report an accident in violation of the law, 4 points;

(h) reckless driving, 5 points;

(i) illegal drag racing or engaging in a speed contest in violation of the law, 5 points;

(j) operating a motor vehicle without a license to do so, 2 points (this subsection (j) does not apply to operating a motor vehicle within a period of 180 days from the date the license expired);

(k) speeding, 3 points;

(l) all other moving violations, 2 points.

(3) There shall be no multiple application of cumulative points when two or more charges are filed involving a single occurrence. If there are two or more convictions involving a single occurrence, only the number of points for the specific conviction carrying the highest points shall be chargeable against that defendant.

Comments in Support of House Bill 146

Pre-Service Law Enforcement Training at MLEA

by Clayton Bain, Executive Director
Peace Officers Standards and Training Advisory Council

Montana's POST Council and the Board of Crime Control have taken the first step toward opening the Academy's Basic training programs to students who are not employees of law enforcement agencies.

At meetings in July, the Council and MBCC approved proposed legislation that would pave the way for launching a pre-service training program.

If the Legislature agrees, non-agency students may be eligible to sign up for the Basics program as soon as the rules for qualification are promulgated and applicants complete the qualifying process.

The proposal to provide pre-service training has been rapidly gaining support in Montana in response to several developments.

Montana's resource pool is being depleted as potential students in the Dawson Community College and Montana State University criminal justice programs enroll in pre-service training programs in North Dakota and other states.

In the North Dakota program, developed in 1987, academic work is provided by several community colleges. The skills portion of the training is provided by the state law enforcement academy.

The North Dakota plan, in which training is paid for by students, is attractive in part because students are POST-certified upon graduation. They are then placed in a manpower pool for employment as peace officers.

Pre-service training proposals are also well received by smaller law enforcement agencies. These agencies suffer from a chronic problem: high recruit turnover.

As a result, these agencies frequently find themselves in a costly revolving door. They hire recruits and send them to the Academy for Basic training, only to lose them before long to better jobs elsewhere.

For these agencies, the prospect of a pool of trained recruits is welcome, particularly now when budgets are tight and resources scarce.

There has also been a change in the approach of people seeking a career in law enforcement. They realize that these days they are more employable if they are trained and POST-certified. More students are willing to pay tuition costs because they know they will have a better opportunity to obtain a job.

The Academy experimented with training a civilian student in Basic 65. An applicant who had passed the POST written and physical ability tests and had no convictions was enrolled. He graduated high in his class and has been accepted by the Highway Patrol.

After a lengthy examination of this experiment, study of other plans and consultation with law enforcement associations such as the MSPOA, the POST Council agreed on the outlines of the pre-service training program.

Here is how the program would work. Entry would be on a dual-track system: submission of an application to a law enforcement agency, or submission of an application to MLEA or POST.

Applicants would be given the POST written and physical ability tests. Fingerprints would be taken and a search conducted for conviction records. Applicants would undergo a medical examination, in compliance with the Academy's requirement.

Applicants who meet the standards for enrolling in Basics-- pass the POST exams, have no convictions and meet the medical standards -- would be placed in a selection pool. Preference would be given first to agency applicants. The remaining applicants would be permitted to enroll on a space available basis. Civilian trainees would pay their tuition.

Upon graduation, civilian trainees would be placed in an employment pool. Agencies would be given the first opportunity to hire those who had applied through their agency.

If they choose not to hire these trainees within a reasonable length of time, they would be available to any agency.

The trainee's name would remain in the pool three years. If trainees are employed by an agency after being removed from the pool, they would be required to complete the Basic Equivalency Test process.

The POST Council adopted the proposal at its July 7 meeting and recommended several amendments to MCA 44-10-202 and 44-10-301 to implement the plan. The MBCC ratified their action July 14.

These amendments will authorize the Attorney General to promulgate administrative rules for establishing qualifications for applicants seeking admission to the Academy.

The amendments will also clearly grant the academy authority to enroll non-service students.

Educational qualifications have not been discussed in this concept, but should be considered when qualification standards are determined.

PROPOSED AMENDMENTS TO HB NO. 135

Mike Sherwood, MTLA

Page 1, Line 5:

Strike: "survives"

Page 1, Line 6:

Strike: "his death even if his death was instantaneous"

Add: "against another for injury that results in instantaneous death survives the death"

Page 1, Line 12:

Strike: "(a)"

Page 1, Line 15:

Strike: "When a"

Add: ", but whenever the"

Page 1, Line 17:

Strike: "his"

Page 1, Lines 19 through 23:

Strike: If a decedent's death from injuries caused by another is instantaneous, any cause of action that would exist had he lived an appreciable amount of time after the injury survives as if his death had not been instantaneous.

Page 1, Line 20 et seq :

Add: "(2) A decedent's cause of action for injuries caused by another and resulting in instantaneous death does not abate by reason of the death, but survives and may be maintained by the decedent's representatives or successors in interest.

Page 1, Line 24:

Strike: "(b)"

Add: "(3)"

Page 2, Line 5:

Strike: "(2)"

Add: "(4)"

claimants understand their own religion, but rather, whether they have discharged their burden of demonstrating, as the Amish did with respect to the compulsory school law in *Yoder*, that the land-use decision poses a substantial and realistic threat of undermining or frustrating their religious practices. Ironically, the Court's apparent solicitude for the integrity of religious belief and its desire to forestall the possibility that courts might second-guess the claims of religious adherents leads to far greater inequities than those the Court postulates: today's ruling sacrifices a religion at least as old as the Nation itself, along with the spiritual well-being of its approximately 5,000 adherents, so that the Forest Service can build a six-mile segment of road that two lower courts found had only the most marginal and speculative utility, both to the Government itself and to the private lumber interests that might conceivably use it.

Similarly, the Court's concern that the claims of Native Americans will place "religious servitudes" upon vast tracts of federal property cannot justify its refusal to recognize the constitutional injury respondents will suffer here. It is true, as the Court notes, that respondents' religious use of the high country requires privacy and solitude. The fact remains, however, that respondents have never asked the Forest Service to exclude others from the area. Should respondents or any other group seek to force the Government to protect their religious practices from the interference of private parties, such a demand would implicate not only the concerns of the Free Exercise Clause, but those of the Establishment Clause as well. That case, however, is most assuredly not before us today, and in any event cannot justify the Court's refusal to acknowledge that the injuries respondents will suffer as a result of the Government's proposed activities are sufficient to state a constitutional cause of action.

IV

Today, the Court holds that a federal land-use decision that promises to destroy an entire religion does not burden the practice of that faith in a manner recognized by the Free Exercise Clause. Having thus stripped respondents and all other Native Americans of any constitutional protection against perhaps the most serious threat to their age-old religious practices, and indeed to their entire way of life, the Court assures us that nothing in its decision "should be read to encourage governmental insensitivity to the religious needs of any citizen." *Ante* at, 12. I find it difficult, however, to imagine conduct more insensitive to religious needs than the Government's determination to build a marginally useful road in the face of uncontradicted evidence that the road will render the practice of respondents' religion impossible. Nor do I believe that respondents will derive any solace from the knowledge that although the practice of their religion will become "more difficult" as a result of the Government's actions, they remain free to maintain their religious beliefs. Given today's ruling, that freedom amounts to nothing more than the right to believe that their religion will be destroyed. The safeguarding of such a hollow freedom not only makes a mockery of the "policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the[ir] traditional religions," *ante* at, 13 (quoting AIRFA), it fails utterly to accord with the dictates of the First Amendment.

I dissent.

ANDREWS J. PINCUS, Assistant to the Solicitor General (CHARLES FRIED, Sol. Gen., ROGER J. MARZULLA, Act'g Asst. Atty. Gen., DONALD B. AYER, Dpty. Sol. Gen., and ROBERT L. KLARQUIST and JACQUES B. GELIN, Justice Dept. attys., on the briefs) for petitioners; MARILYN B. MILES, Eureka,

Calif. (STEPHEN V. QUESENBERRY, JOHN K. Van De KAMP, California Atty. Gen., R.H. CONNETT, California Asst. Atty. Gen., and EDNA WALZ, California Dpty. Atty. Gen., on the briefs) for respondents.

108 S. Ct. 1340
(1988)
No. 86-1961

TULSA PROFESSIONAL COLLECTION SERVICES,
INC., APPELLANT v. JOANNE POPE, EXECUTRIX
OF THE ESTATE OF H. EVERETT
POPE, JR., DECEASED

ON APPEAL FROM THE SUPREME COURT OF OKLAHOMA

Syllabus

No. 86-1961. Argued March 2, 1988—Decided April 19, 1988

Under the nonclaim provision of Oklahoma's probate code, creditors' claims against an estate are generally barred unless they are presented to the executor or executrix within two months of the publication of notice of the commencement of probate proceedings. Appellee executrix published the required notice in compliance with the terms of the nonclaim statute and a probate court order, but appellant, the assignee of a hospital's claim for expenses connected with the decedent's final illness, failed to file a timely claim. For this reason, the probate court denied appellant's application for payment, and both the State Court of Appeals and Supreme Court affirmed, rejecting appellant's contention that, in failing to require more than publication notice, the nonclaim statute violated due process. That contention was based upon *Mullane v. Central Hanover Bank and Trust Co.*, 339 U. S. 306, which held that state action that adversely affects property interests must be accompanied by such notice as is reasonable under the particular circumstances, balancing the State's interest and the due process interests of individuals, and *Mennonite Board of Missions v. Adams*, 462 U. S. 791, which generally requires actual notice to an affected party whose name and address are "reasonably ascertainable."

Held: If appellant's identity as a creditor was known or "reasonably ascertainable" by appellee (a fact which cannot be determined from the present record), the Due Process Clause of the Fourteenth Amendment, as interpreted by *Mullane* and *Mennonite*, requires that appellant be given notice by mail or such other means as is certain to ensure actual notice. Appellant's claim is properly considered a property interest protected by the Clause. Moreover, the nonclaim statute is not simply a self-executing statute of limitations. *Tezaco, Inc. v. Short*, 454 U. S. 516, distinguished. Rather, the probate court's intimate involvement throughout the probate proceedings—particularly the court's activation of the statute's time bar by the appointment of an executor or executrix—is so pervasive and substantial that it must be considered state action. Nor can there be any doubt that the statute may "adversely affect" protected property interests, since untimely claims such as appellant's are completely extinguished. On balance, satisfying creditors' substantial, practical need for actual notice in the probate setting is not so cumbersome or impracticable as to unduly burden the State's undeniably legitimate interest in the expeditious resolution of the proceedings, since mail service (which is already routinely provided at several points in the probate process) is inexpensive, efficient, and reasonably calculated to provide actual notice, and since publication notice will suffice for creditors whose identities are not ascertainable by reasonably diligent efforts or whose claims are merely conjectural.

733 P. 2d 396, reversed and remanded.

O'CONNOR, J., delivered the opinion of the Court, in which BRENNAN, WHITE, MARSHALL, STEVENS, SCALIA, and KENNEDY, JJ., joined. BLACKMUN, J., concurred in the result. REHNQUIST, C. J., filed a dissenting opinion.

JUSTICE O'CONNOR delivered the opinion of the Court.

This case involves a provision of Oklahoma's probate laws requiring claims "arising upon a contract" generally to be presented to the executor or executrix of the estate within 2 months of the publication of a notice advising creditors of the commencement of probate proceedings. Okla. Stat., Tit. 58, § 333 (1981). The question presented is whether this provi-

Amendments to House Bill No. 146
Introduced Copy

Requested by Rep. Brooke
For the Committee on the Judiciary

Prepared by John MacMaster
January 19, 1989

1. Page 1, line 17.
Following: "and other"
Insert: "qualified"

JUDICIARY

BILL NO. HOUSE BILL 112

DATE JANUARY 19, 1989

SPONSOR REP. GOULD

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

JUDICIARY

COMMITTEE

BILL NO. HOUSE BILL 146DATE JAN. 19, 1989SPONSOR REP. STRIZICH

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
<i>C. Clayton Bain</i>	<i>Helena</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>Peter Funk</i>	<i>Dept. of Justice</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

JUDICIARY

COMMITTEE

BILL NO. HOUSE BILL 135

DATE JANUARY 19, 1989

SPONSOR REP. MERCER

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

