

## MINUTES

### MONTANA HOUSE OF REPRESENTATIVES 51st LEGISLATURE - REGULAR SESSION

#### HOUSE COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT

Call to Order: By Rep. Bob Pavlovich, on March 13, 1989, at 10:00 a.m.

#### ROLL CALL

Members Present: All with exception of:

Members Excused: None

Members Absent: Rep. Glaser

Staff Present: Paul Verdon and Sue Pennington

Announcements/Discussion: None

#### HEARING ON SENATE BILL 138

#### Presentation and Opening Statement by Sponsor:

Sen. Brown presented SB 138 which is an act requiring loan and credit agreements to be in writing in order to be enforceable; and provides an applicability date.

#### Testifying Proponents and Who They Represent:

Chip Erdman, MT League of Financial Institutions  
George Bennett, MT Bankers Association  
Frank Shaw, Norwest Bank Great Falls  
Phil Johnson, Director, MT Bankers Association  
John Ross, Billings

#### Proponent Testimony:

Mr. Erdman's association supports this bill.

Mr. Bennett said his association also strongly supports this bill. There are a multitude of theories for which banks can be sued, one which appears a great deal, and should not, is the claim of an oral loan commitment.

Mr. Shaw said he supports SB 138. This will eliminate some unnecessary litigation.

Mr. Johnson said they support SB 138.

Mr. Ross submitted written testimony. See exhibit 1.

Testifying Opponents and Who They Represent:

Mike Sherwood, MTLA  
Brant Quick, Northern Plains Resource Council  
Rep. Bruce Simon

Opponent Testimony:

Mr. Sherwood submitted written testimony. See exhibit 2.

Mr. Quick submitted written testimony. See exhibit 3.

Rep. Simon wanted to go on record as strongly opposing this bill. I have been victimized in this system and I know how difficult it is to pursue legal action against a financial institution based on this kind of action. I thought I was going to be in court a few weeks ago, only to have a summary judgment brought against me. Now I have to take this issue to the Supreme Court before I can even get my day in court. This is a difficult thing to pursue for someone like myself or any other business person, this suing a bank, they are very sophisticated, they are very well financed. If they don't want their loan officers making verbal agreements then they should tell them to not make verbal agreements. They don't have to put it in Montana codes. All they have to do is tell their loan officers not to make verbal agreements. I urge the committee to give this bill a fair hearing and then let it hang.

Questions From Committee Members: Rep. Nelson asked Mr. Sherwood if a bank has a good customer that they have dealt with over a long period of time if they couldn't cover their tracks by keeping a file of the agreements they have made, whether verbal or written? Mr. Sherwood said that was exactly his point, if they want to do business have it only in writing, have a disclosure form signed by the customer. On the other hand, they can do oral agreements and document the discussions and agreements with the customer.

Rep. Thomas asked Mr. Bennett if this would essentially throw out anything involving a credit agreement that is not in writing from the legal standpoint? Anything that was conducted verbally would not apply in any civil action primarily, throwing it completely out if it were not in writing or could somebody come and say I know it is not in writing but he gave me a firm commitment on Friday afternoon at 5:00 p.m., what is the score on that? Mr. Bennett said the intent of this bill is to require, for example, to loan money, the professional lender and somebody borrowing more than \$10,000 for something other than personal purposes and the other exceptions, I thought we excluded credit cards like American Express, so that negotiations have to be brought together in the form of writing before there is a commitment to loan whether it is an obligation on the lender to lend or the borrower to borrow.

Rep. Johnson asked Mr. Johnson what prevents the bank now from requiring written agreements? Mr. Johnson said there was nothing that would prevent this.

Rep. Simon asked Mr. Johnson if in the case of Rep. Wallin calling you from Denver asking for credit and he was at the top of his credit line, if you felt he was creditworthy and you gave him verbal assurance to increase his credit, would you not feel morally bound? But under this bill you would not be legally bound would you unless you had the agreement in writing? Mr. Johnson said in a case like that we might have a problem. Rep. Simon asked Mr. Bennett the same question. Mr. Bennett said that Rep. Simon was right, they would not be legally bound by the verbal agreement.

Closing by Sponsor: Sen. Brown said in closing that he thought the committee gave the bill an excellent hearing and in closing said the bill was introduced to avoid some of the problems that the opponents brought before you today.

#### HEARING ON SENATE BILL 326

#### Presentation and Opening Statement by Sponsor:

Sen. Yellowtail, Senate District 50, today I am presenting this bill which has to do with the gas tax refund presently in law for off-road use. Bonafide agricultural operators are allowed to use a 60 percent estimate of bulk delivered gasoline use for the estimating of use refund. This arises from the frustration of a farmer in my district who lives within a mile of town and finds it convenient to simply drive his farm vehicles into town, fuel up at the cardtrol pump whether it is early in the morning or late in the evening whenever he happens to be working and go directly back to the field. The law seems to be unclear and he has a bit of difficulty in claiming the off-road refund for his cardtrol purchases. This bill will simply clarify the law and make it certain that he can claim on the basis of the cardtrol receipts the 60 percent refund. My intention of this bill is that this be for fueling from the cardtrol pump directly into the operation tank on the vehicle.

#### Testifying Proponents and Who They Represent:

Ted Neuman, Montana Council of Cooperatives

#### Proponent Testimony:

Mr. Neuman stated that cooperatives dispense large amounts of fuel to the farmers and they support this bill.

#### Testifying Opponents and Who They Represent:

None

Opponent Testimony:

None

Questions From Committee Members: None

Closing by Sponsor: Sen. Yellowtail said that the bill would have a small impact as it affects a small group of people. I hope you give it a favorable vote.

EXECUTIVE ACTION  
DISPOSITION OF SENATE BILL 326

Motion: Rep. DeMars moved BE CONCURRED IN.

Discussion: None

Amendments, Discussion, and Votes: None

Recommendation and Vote: SB 326 BE CONCURRED IN unanimously.

DISPOSITION OF SENATE BILL 138

Motion: Rep. Nelson moved BE NOT CONCURRED IN.

Discussion: None

Amendments, Discussion, and Votes: Rep. Thomas said he in no way wanted to speak in favor of this bill at this point but I do want to propose an amendment on page 3, line 13, strike \$10,000 and insert \$50,000. It would be my intent that should the bill come to the house floor one way or another that this bill have a higher threshold than \$10,000. Rep. Pavlovich said that the credit card companies wanted \$100,000 and yet you bring it down to \$50,000. Rep. Thomas said he repeals the \$50,000 and insert \$100,000. The amendment DO PASS.

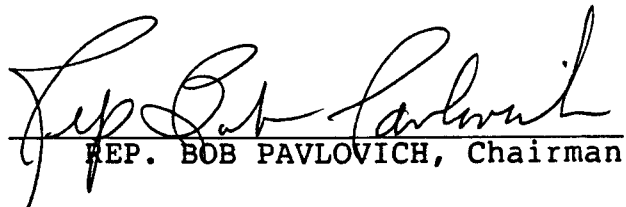
Rep. Hansen moved the amendments by American Express.

Rep. Simon made a substitute motion to TABLE the bill.

Recommendation and Vote: SB 138 TABLED 10-5 vote.

ADJOURNMENT

Adjournment At: 11:05 a.m.

  
REP. BOB PAVLOVICH, Chairman

## DAILY ROLL CALL

BUSINESS & ECONOMIC DEVELOPMENT COMMITTEE

51th LEGISLATIVE SESSION -- 1989

Date 3 13 89

NAME	PRESENT	ABSENT	EXCUSED
PAVLOVICH, BOB	✓		
DeMARS, GENE	✓		
BACHINI, BOB	✓		
BLOTKAMP, ROB	✓		
HANSEN, STELLA JEAN	✓		
JOHNSON, JOHN	✓		
KILPATRICK, TOM	✓		
McCORMICK, LLOYD "MAC"	✓		
STEPPLER, DON	✓		
GLASER, BILL		✓	
KELLER, VERNON	✓		
NELSON, THOMAS	✓		
SIMON, BRUCE	✓		
SMITH, CLYDE	✓		
THOMAS, FRED	✓		
WALLIN, NORM	✓		
PAUL VERDON	✓		

# ROLL CALL VOTE

BUSINESS AND ECONOMIC DEVELOPMENT

COMMITTEE

DATE 3/13/89 BILL NO. SB 326 NUMBER       

NAME	AYE	NAY
Bob Pavlovich		
Bob Bachini		
Rob Blotkamp		
Gene DeMars		
Bill Glaser		
Stella Hansen		
John Johnson		
Vernon Keller		
Tom Kilpatrick		
Lloyd McCormick		
Thomas Nelson		
Bruce Simon		
Clyde Smith		
Don Stepler		
Fred Thomas		
Norm Wallin		

TALLY

15

Sue Pennington  
Secretary

Bob Pavlovich  
Chairman

MOTION:

Rep. De Mars moved be concurred  
in.

Rep Stepler will carry

STANDING COMMITTEE REPORT

March 13, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Business and Economic Development report that SENATE BILL 326 (third reading copy - blue) be concurred in .

Signed: \_\_\_\_\_  
Robert Pavlovich, Chairman

FF 1  
SB 138  
3/13/81

RE: Senate Bill No. 138

STATEMENT AND AMENDMENT  
OF AMERICAN EXPRESS

I am John W. Ross, an attorney from Billings, Montana.  
I am here today representing American Express.

American Express understands the intent of Senate Bill No. 138, as amended on third reading, is to exempt credit card transactions. American Express supports such exemptions of credit cards and related matters.

American Express believes that such exemptions can be made more clearly by the following amendments to Senate Bill No. 138, as it now appears on third reading.

American Express is concerned about the \$10,000.00 limit contained in the current definition of "debtor". Such \$10,000 limit would render personal credit in excess of that amount subject to the statute. This would include such things as overdraft checking accounts and home equity loans, which are often issued in excess of \$10,000 and which may utilize preprinted agreements which a debtor does not sign. Therefore, American Express proposes that the dollar limit from the definition of "debtor", be removed. If the legislature believes strongly that a dollar threshold is needed, American Express proposes that they following the California example and set such limit at \$100,000.00, which would be large enough to accommodate most "mass marketed", non-commercial loans. Furthermore, any limit would be more appropriately placed as part of the definition of "credit

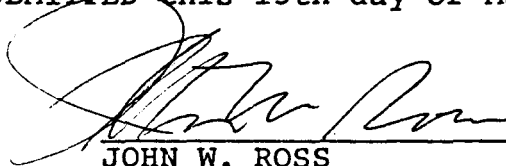


agreement", rather than as part of the definition of "debtor".

Secondly, American Express proposes that the definition of "credit agreement", be enlarged slightly to include charge cards and other personal lines of credit. Attached hereto as Exhibit "1", is a marked up copy of Senate Bill No. 138, third reading, which shows the proposed amendment to the definition of "credit agreement", offered by American Express. Also shown on Exhibit "1", is the proposed deletion of the \$10,000 limit, from the definition of "debtor", proposed by American Express.

Thank you for consideration of these proposed amendments.

RESPECTFULLY SUBMITTED this 13th day of March, 1989.



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JOHN W. ROSS  
ANDERSON, BROWN, GERBASE, CEBULL,  
FULTON, HARMAN & ROSS, P.C.  
315 North 24th Street  
Billings, MT 59101  
(406) 248-2611

1 EXPRESSES CONSIDERATION, SETS FORTH THE RELEVANT TERMS AND  
2 CONDITIONS, AND IS SIGNED BY THE CREDITOR AND THE DEBTOR. AS  
3 USED IN THIS SECTION, THE FOLLOWING DEFINITIONS APPLY:

4 (1) "CREDIT AGREEMENT" MEANS AN AGREEMENT TO LEND OR  
5 FORBEAR REPAYMENT OF MONEY BUT DOES NOT INCLUDE PROMISSORY  
6 NOTES NOT A PART OF A CREDIT AGREEMENT ~~SALE, OR CREDIT~~  
7 ~~AND REMEDIATION.~~

8 (2) "CREDITOR" MEANS A PERSON WHO IS ENGAGED PRIMARILY  
9 IN THE BUSINESS OF MAKING LOANS UNDER A CREDIT AGREEMENT  
10 WITH A DEBTOR.

11 (3) "DEBTOR" MEANS A PERSON WHO OBTAINS CREDIT, SEEKS  
12 A CREDIT AGREEMENT WITH A CREDITOR, OR OWES MONEY TO A  
13 CREDITOR, ~~WHICH CREDIT IS IN EXCESS OF \$10,000 AND NOT~~  
14 ~~FOR THE PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES.~~

15 NEW SECTION. SECTION 3. CODIFICATION INSTRUCTION.  
16 [SECTION 2] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART  
17 OF TITLE 28, CHAPTER 2, PART 9, AND THE PROVISIONS OF TITLE  
18 28, CHAPTER 2, PART 9, APPLY TO [SECTION 2].

19 NEW SECTION. Section 4. Applicability. [This act]  
20 applies to agreements made on or after October 1, 1989.

-End-

, or agreements made in connection with the  
issuance and use of credit cards, charge cards,  
and lines of credit used primarily for personal,  
family, or household purposes.

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MONTANA — 

51st Legislature

SB 0130/93

SB 0130/01

## SENATE BILL NO. 130

INTRODUCED BY B. BROWN, LUTCH, NEEDING, MCCLARK

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING LOAN AND CREDIT AGREEMENTS TO BE IN WRITING IN ORDER TO BE ENFORCEABLE; AMENDING SECTION 20-2-903, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

Section 1. Section 20-2-903, MCA, is amended to read:

"20-2-903. What contracts must be in writing. (1) The following agreements are invalid unless the same or some note or memorandum thereof is in writing and subscribed by the party to be charged or his agent:

(a) an agreement that by its terms is not to be performed within a year from the making thereof;

(b) a special promise to answer for the debt, default, or miscarriage of another, except in the cases provided for in 20-11-105;

(c) an agreement made upon consideration of marriage other than a mutual promise to marry;

(d) an agreement for the leasing for a longer period than 1 year or for the sale of real property or of an interest therein. Such agreement, if made by an agent of the party sought to be charged, is invalid unless the authority

of the agent is in writing and subscribed by the party sought to be charged.

(e) an agreement authorizing or employing an agent or broker to purchase or sell real estate for compensation or a commission;

(f) an agreement, promise, undertaking, or commitment to loan money or to grant or extend credit, provided, however, that this subsection does not apply to any agreement or commitment to grant or extend credit between a public utility regulated by the public service commission and a customer of the utility.

(2) Evidence of an agreement described in [SECTION 2] AND IN SUBSECTIONS (1)(a) through (1)(d) and (f) of subsection (1) OF THIS SECTION is not admissible without the writing or secondary evidence of its contents.

(3) No evidence is admissible to charge a person upon a representation as to the credit of a third person unless such representation or some memorandum thereof is in writing and either subscribed by or in the handwriting of the party to be charged.

(4) Subsections (1) and (2) do not apply to agreements subject to the Uniform Commercial Code."

NEW SECTION. SECTION 2. CREDIT AGREEMENTS TO BE IN WRITING. A DEBTOR OR CREDITOR MAY NOT MAINTAIN AN ACTION ON A CREDIT AGREEMENT UNLESS THE AGREEMENT IS IN WRITING.

#2  
\$ 138  
3/13/89

Testimony of Michael Sherwood, MTLA

OPPOSING Senate Bill No. 138

Before House Business Committee

MTLA opposes this bill for the following reasons.

1. Section 28-2-903 MCA currently requires agreements to be in writing in a variety of instances. These instances have two things in common:

- a. The potential for unsophisticated parties bind themselves.
- b. An agreement involving a long term or serious undertaking.

2. In this instance we have a special interest group, Bankers, arguably the most sophisticated of parties in financial agreements asking the legislature to grant them the protections of this statute.

3. If banks wish to only be bound by agreements in writing they can make this clear to their customers by providing a written disclosure to that effect to each customer. If they wish to be held to their oral promises they can refrain from doing so.

4. In the commercial world, banks have been running into problems primarily because, in spite of the fact that they amortize loans over lengthy periods of time, they often extend credit only on an annual or semi-annual basis. This means that the borrower must renew his note multiple times, before it is finally amortized. If the bank becomes concerned about repayment it refuses to renew the note and requires payment in full. The commercial borrower is seldom able to meet this demand without liquidating his business. The bank has effectively put him out of business.

The problem arises because the commercial borrower has been working under the assumption that if he continues to meet his debt obligation the note will continue to be renewed, even though the bank has not made this commitment in writing.

5. Another example is that which arose in the Clark case. The bank called a note due and, according to Clark, agreed to forgive the note if he deeded some property to the bank. Clark did so. The Bank sold the property for less than Clark owed it, then sued Clark for the

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6/18  
- Bad  
Faith

balance. Clark counterclaimed for relief from the obligation based upon the bank's oral commitment. This legislation would preclude such a defense.

6. This sort of situation also arose in the Dinsmore case in Butte. Dinsmore operated a car dealership and owed money to the bank. The bank ultimately refused to honor his line of credit. There had been no written commitment to do so. In that case the bank was financially connected with a competing car dealership.

7. This legislation would preclude claims by businessmen against banks in situations such as Clark or Dinsmore. It would harm rather than protect the less sophisticated party to the transaction.

I urge you to please reject this legislation.

23  
SB 138  
3/13/89

# NORTHERN PLAINS RESOURCE COUNCIL

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Box 858  
Helena, MT 59624  
(406) 443-4965

Main Office  
419 Stapleton Building  
Billings, MT 59101  
(406) 248-1154

Field Office  
Box 886  
Glendive, MT 59330  
(406) 365-2525

## TESTIMONY OF THE NORTHERN PLAINS RESOURCE COUNCIL IN OPPOSITION TO SB 138.

Mr. Chairman, Members of the Committee,

My name is Brant Quick. I am here on behalf of the Northern Plains Resource Council to express our opposition to Senate Bill 138.

I am a forth generation Montanan who grew up on a ranch southeast of Circle. I could not begin to count the number of times that I have heard other Montanans proudly proclaim how they enjoyed living in a place where a person's word still means something. SB 138 promises to change this. By deeming that a "debtor or creditor may not maintain an action on a credit agreement unless the agreement is in writing," SB 138 legally allows those who would to renig on verbal agreements.

The Legislature, by its actions, has a great impact on our state's business climate. As members of the House Committee on Business and Economic Development, I would ask that you consider the impacts this bill would have on Montana businesses.

Currently, there is a case before a Montana court in which a farmer was given a verbal commitment by his lender to renew his operating loan. The farmer, acting on this commitment, renewed several land leases and purchased fertilizer and other supplies on credit. When his lender failed to renew his loan it basically broke the farmer and placed a great burden on the lessor of the land and the local suppliers who counted on the release of operating funds so they in turn would be paid. The farmer's only recourse was to sue.

Unfortunately, this is not an isolated incident. At the Northern Plains Resource Council (NPRC), we receive countless calls from farmers across the state who are in similar straits. Many have been told that if they sign agreements giving their lenders additional collateral, their loans will be renewed. They later find that once they have committed additional collateral, their loans are instead foreclosed on.

I do not mean to imply that all lenders are like this or that this type of behavior is limited to lenders. It just happens that my experience has been primarily from the perspective of agricultural borrowers. I have no reason to

believe that some farmers, ranchers, and other businesspeople do not do the same sort of thing to their lenders and others. Nor do I believe that credit agreements should not be in writing. We at NPRC, urge everyone who calls us for help to get all commitments in writing. However, if you take away the legal recourse of any party to a loan agreement who has been wronged, many people, including secondary parties such as local suppliers, will be dealt serious financial blows.

There are those who would argue that SB 138 would simplify and clarify the way business is done in Montana by encouraging all credit agreements to be in writing. For generations many local banks and other businesses have done a substantial amount of business on a less formal basis. If suddenly the rules of the game are changed so verbal agreements no longer have to be honored, it will harm those businessmen and -women who can least afford legal expertise. The only beneficiaries of this bill would be those few individuals who do not do business in an honest manner. We do not believe this is the signal this committee wants to send to the people of Montana and we urge that you give SB 138 an "do not pass" recommendation.

Thank you for your consideration.

WITNESS STATEMENT

NAME JOHN ROSS BILL NO. S. B. 138

ADDRESS 315 NORTH 24<sup>th</sup> STREET, Billings

WHOM DO YOU REPRESENT? AMERICAN EXPRESS

SUPPORT \_\_\_\_\_ OPPOSE \_\_\_\_\_ AMEND ✓

COMMENTS: \_\_\_\_\_

PLEASE See PREPARED  
WRITTEN STATEMENT

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.



Business

BILL NO.

513 326

DATE \_\_\_\_\_

3/13/89

SPONSOR

B. Brown

Yellow tail

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.