

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND INDUSTRY

Call to Order: By CHAIRMAN GENE THAYER, on January 19,
1989, at 10:00 A.M.

ROLL CALL

Members Present: Chairman Thayer, Vice Chairman Meyer,
Senator Noble, Senator Williams, Senator Hager, Senator
McLane, Senator Weeding, Senator Lynch.

Members Excused: Senator Boylan

Members Absent: None

Staff Present: Mary McCue, Legislative Council

Announcements/Discussion: None

HEARING ON SENATE BILL 138

Presentation and Opening Statement by Sponsor:

Senator Bob Brown, District 2, suggested the title, "An Act Requiring Loan And Credit Agreements To Be In Writing In Order To Be Enforceable", described the bill, with the emphasis on the word enforceable. He said the concept was not new in law as the Commercial Code required sales contracts in the amount of over \$500 need to be in writing, and the concept was well established in law that all real estate contracts need be in writing. He cited SB 138 as extending the same concept in law to loan and credit agreements. He stated, the purpose was to establish proof that a lending agreement was in existence, while revealing the provisions within. A written agreement was cited as helpful in preventing misunderstandings or litigations which could be harmful to both borrower and lending institution.

List of Testifying Proponents and What Group They Represent:

George Bennett, Montana Bankers Association
Phil Johnson, Director of Montana Bankers Association
Gordon Ochenrider, President, Mountain Bank of
Whitefish, Montana
Chip Erdman, Montana League of Savings Institutions

Roger Tippy, Attorney, Montana Independent Bankers
Association
Forest H. Boles, President of Montana Chamber of
Commerce
Doug Boutilier, Vice President Valley Bank-Helena,
Montana

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Mr. George Bennett opened by requesting support of SB 138. He stated the section they were amending was the "statute of frauds", requiring an agreement in writing. The bill required a written note or memorandum between parties entering into promises, undertakings, or commitments to loan money or to grant or extend credit (See Exhibit #1).

Phil Johnson testified, "Oral promises to lend money, rework indebtedness or to forebear money lent have been made and broken to the damage of customers and the financial institutions. Senate Bill 138 should eliminate problems caused by misunderstandings for both consumers and lenders."

"First, the bill will eliminate the problem of frivolous and unjustified counter claims being filed by debtors claiming that the oral credit commitments existed beyond those stated in the written security agreement."

"Second, this bill will ensure stability and certainty in transactions by requiring that only written agreements be valid in connection with lending, refinancing, or renewing credit." (See Exhibit #2)

Gordon Ochenrider stated, "The purpose of this bill is to avoid misunderstandings, to improve communications, and to provide an additional element of certainty and stability in a transaction for both lender and borrower."..."with the passage of this bill, lenders and borrowers will be put on notice that all such intended agreements should be in writing to be binding. The bill will facilitate more frank and open communications and avoid embarrassing and expensive misunderstandings." (See Exhibit #3)

Chip Erdman stated the League of Savings Institutions supported the bill because it provided a certainty and reduced risk of litigation for everyone involved. (See Exhibit #4)

Roger Tippy assured the committee, the Independent Bankers agreed with all of the previous testimony, and urged their support.

Forest Boles asked to be put on record in support of the bill. He stated there had been a chilling affect on financing operations within the state, and he thought the bill would alleviate the problem.

Doug Boutilier said their bank supported the bill because they thought it helped banks and borrowers have a clearer understanding of transactions.

Questions From Committee Members: None

Closing by Sponsor: Senator Brown simply stated he closed.

HEARING ON HOUSE BILL 3

Presentation and Opening Statement by Sponsor:

Representative Dan Harrington, District 68, stated HB 3 was a bill that dealt with gasoline leaving the state without taxes having been paid. He said the main part of the bill defined "exporter" on page 3.

List of Testifying Proponents and What Group They Represent:

Norris Nichols, Department of Revenue
Ben Havdahl, Montana Motor Carriers Association

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Norris Nichols said the bill came from the Revenue Oversight Committee in regard to the movement of gasoline. If gasoline was intended to be exported from the state, but remained within the state for some reason, the Department would collect the tax due from the seller.

This bill would define an exporter, a refiner and a wholesale distributor. With this statute, these entities would have to report and become licensed as an exporter, with the Department of Revenue. They would have to report the movement of gasoline leaving the state, or arriving at a terminal. (See Exhibit #5)

Ben Havdahl suggested an amendment to page 10, line 22. Following the word "transportation" insert the word "ownership".
"Under the Motor Carriers Act, the owner of a regulated

commodity can transport a commodity in his own vehicle without PSC authority. Right now, there is no record to establish ownership of gasoline. During transport, ownership identity is vital to the Motor Carriers Division in determining whether the Act is being obeyed." (See Exhibit #6)

Questions From Committee Members:

Senator Weeding wondered why the Act just referred to gasoline, and not diesel too? Norris Nichols explained, "There are two Acts in the state of Montana. One is a gasoline act, which licenses distributors, and the tax is placed upon that distributor. The diesel tax is a use tax, and is placed upon the fuel at time of use, so it wouldn't fit here."

Closing by Sponsor:

Representative Harrington felt the amendment was needed, and he hoped the committee would recommend a Do Pass.

DISPOSITION OF SENATE BILL 138

Discussion: None

Recommendation and Vote:

Senator Lynch moved SB 138 Do Pass. Senator Meyer Seconded the motion. Motion carried unanimously.

DISPOSITION OF HOUSE BILL 3

Discussion:

Chairman Thayer clarified the proposed amendment. The one word change was agreed upon, and action was taken. (See Exhibit #7)

Amendments and Vote:

Senator Lynch moved the amendment. Senator Meyer seconded. Motion carried.

Recommendation and Vote:

Senator Lynch moved House Bill 3 Do Pass As Amended. Senator McLane seconded. Motion carried. Senator Noble was assigned to carry House Bill 3.

HEARING ON SENATE BILL 137

Presentation and Opening Statement by Sponsor:

Senator Dennis Nathe, District 10 stated, Senate Bill 137 was a bill to allow corporations to make elections,

in their corporate income tax, to carry losses forward or backward. At the present time, in the state of Montana, you were only allowed to carry losses back. This bill would provide the option of a loss carry forward as was offered with federal income tax preparation.

Senator Nathe identified Section 3 as a new section created for the purpose of singling out all which pertained to net operating losses in the deduction section, which dealt with loss carry forwards and carry backs.

List of Testifying Proponents and What Group They Represent:

Tom Harrison, Montana Society of Certified Public Accountants
Lynn Chenowith, Department of Revenue

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Tom Harrison said the bill simplified the process, as it conformed the state tax return preparation with the preparation of federal taxes. This would benefit the tax accountant, and the tax payer alike. It allowed the tax payer to carry losses forward or back and enabled him to level income through years of great fluctuation of income. (See Exhibit #8)

Lynn Chenowith stated they hadn't taken a position on the bill. Generally, he said he thought they would support it because of the aligning of state and federal loss and carry over provisions.

Chenowith stated, "He thought, page 9, line 15, "subsection (1)" should be "subsection (2)". The second item of concern was when the previous net operating loss provisions were stricken and reinserted in Section Three, on several occasions the words "shall not" were changed to "may not". The departments review felt it didn't change the substance of the law. It does, however, feel it provides some discretion to the department. If a refund is the result of a net loss carry back, the Department of Revenue shall not issue interest as it now reads. The change leaves it to the discretion of the Department. The Department of Revenue suggested this language be clarified." (See Exhibit #9)

Questions From Committee Members: Mr. Harrison replied to Senator Lynch's inquiry regarding the language change, this committee has the best legal staff in the building, and leave it to her explanation. Mary McCue said they were trying to clean up the grammar in the bill, and the proper term was "may not". It does not give the Department of Revenue any discretion. It means they can't. Mary further informed Senator Lynch the issue of subsection (1), instead of subsection (2) was a typographical error, and should be subsection (2). She stated this error should be corrected with an amendment.

Closing by Sponsor:

Senator Nathe closed by stating, "The bill is a simple means of allowing corporations to level out a fluctuating income and loss situation.

DISPOSITION OF SENATE BILL 137

Discussion:

The error, concerning the subsection of this bill, required an amendment.

Amendments and Votes:


Senator Lynch moved to amend the bill to change subsection (1), to subsection (2). It was seconded by Senator Noble. Motion carried. (See Exhibit 10)

Recommendation and Vote:

Senator Hager moved SB 137, DO PASS AS AMENDED. Senator McLane seconded the motion. Motion carried.

ADJOURNMENT

Adjournment At: 11:34 A.M.



GENE THAYER, Chairman

GT/ct

BUS119

ROLL CALL

BUSINESS & INDUSTRY COMMITTEE

DATE 1/19/89

51st LEGISLATIVE SESSION 1989

NAME	PRESENT	ABSENT	EXCUSED
SENATOR DARRYL MEYER	✓		
SENATOR PAUL BOYLAN			✓
SENATOR JERRY NOBLE	✓		
SENATOR BOB WILLIAMS	✓		
SENATOR TOM HAGER	✓		
SENATOR HARRY MC LANE	✓		
SENATOR CECIL WEEDING	✓		
SENATOR JOHN "J.D." LYNCH	✓		
SENATOR GENE THAYER	✓		

Each day attach to minutes.

STANDING COMMITTEE REPORT

January 19, 1989

MR. PRESIDENT:

We, your committee on Business and Industry, having had under consideration SB 138 (first reading copy -- white), respectfully report that SB 138 do pass.

DO PASS

Signed: 
Gene Thayer, Chairman

STANDING COMMITTEE REPORT

January 19, 1989

HON. PRESIDENT:

We, your committee on Business and Industry, having had under consideration HB 3 (third reading copy -- blue), respectfully report that HB 3 be amended and as so amended be concurred in:

1. Page 10, line 22.

Following: "transportation,"

Insert: "ownership,"

AND AS SO AMENDED BE CONCURRED IN

Signed: Gene Thayer
Gene Thayer, Chairman

STANDING COMMITTEE REPORT

January 19, 1989

MR. PRESIDENT:

We, your committee on Business and Industry, having had under consideration SB 137 (first reading copy -- white), respectfully report that SB 137 be amended and as so amended do pass:

1. Page 9, line 15.
Strike: "(1)"
Insert: "(2)"

AND AS SO AMENDED DO PASS

Signed: 
Gene Thayer, Chairman

(This sheet to be used by those testifying on a bill.)

NO. EX 1
1/19/89
SB 138
DATE: 1/19/89

NAME: GEORGE T. BENNETT

ADDRESS: P.O. Box 1705 HELENA 59624

PHONE: 442-3691

REPRESENTING WHOM? MONTANA BANKERS ASSN

APPEARING ON WHICH PROPOSAL: S.B. 138

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

COMMENT: SEE ATTACHED WRITTEN STATEMENT
Exhibit #1

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Bennett

TESTIMONY OF MONTANA BANKERS ASSOCIATION -

GEORGE T. BENNETT, COUNSEL

IN SUPPORT OF SENATE BILL NO. 138

This bill amends § 28-2-903, MCA, a provision known as the "statute of frauds." The purpose of the statute of frauds is to make parties reduce to writing their agreements on certain kinds of transactions. This bill would add to the list agreements, promises, undertakings, or commitments to loan money or to grant or extend credit.

There are other statutes in Montana that require agreements to be in writing. For example, the Uniform Commercial Code has provisions requiring agreements to be in writing. The acts required by the statute of frauds are easy to satisfy. What is required is "some note or memorandum thereof in writing and subscribed by the party to be charged or his agent."

Also the courts have allowed exceptions to the requirement of the statute of frauds to protect parties.

The purpose of the statute of frauds, as the name implies, is to prevent overreaching, deceit, and similar problems in negotiation and formation of a contract or agreement. It is to prevent the parties from claiming that oral agreements were made.

This bill simply adds to the list of transactions requiring a writing the loan or credit transaction. The need for this bill is dictated by the large number of cases which have developed in Montana courts in disputes between borrowers and lenders as to alleged oral agreements.

Ex. #1
1/19/89
SB 138
PS 2

Loan transactions should be documented and it is in the best interests of both the borrower and the lender that such agreements be required to be in writing so that misunderstandings are avoided with the resulting expensive and time consuming litigation.

Ex 102

(This sheet to be used by those testifying on a bill EXHIBIT NO. # 2)

DATE: 1/19/89

NAME: Phillip B Johnson

BILL NO. SB138
DATE: 1/19/89

ADDRESS: 2604 Gold Rush - Helena

PHONE: Bns. 442-2540

REPRESENTING WHOM? Montana Bankers Assoc.

APPEARING ON WHICH PROPOSAL: SB138

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENT: Comments passed out to Committee - see Exhibit # 2

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Testimony for Senate Bill 138
by Montana Bankers Association

Senate Business Committee

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 2
DATE 1/19/89
BILL NO. SB 138

Phil Johnson

10:00 am
January 19, 1989

Oral promises to lend money, rework indebtedness or to forbear money lent have been made and broken to the damage of customers and the financial institutions. Senate Bill 138 should eliminate problems caused by misunderstandings for both consumers and lenders.

First, the bill will eliminate the problem of frivolous and unjustified counter claims being filed by debtors claiming that the oral credit commitments existed beyond those stated in the written security agreement. This has become a common practice for debtors in foreclosure and bankruptcy situations and only serves to delay the legal process and create sizable expenditures for banks. This has the bottom line effect of protecting the bad customer at the expense of the good customer since the bank's operating costs are increased.

Second, this bill will ensure stability and certainty in transactions by requiring that only written agreements be valid in connection to lending, refinancing, or renewing credit. Both the consumer and the financial institution will be covered from potential lawsuits and irreparable financial hardship.

Kansas, California, Georgia, Washington, and Minnesota have recently passed similar bills. In Kansas the bill led the Kansas Bankers Surety Company to file for a 15% reduction in its directors and officers liability premium rates. Lower operating costs will

(This sheet to be used by those testifying on a bill.)

EXHIBIT NO. 3
DATE 1/19/89

BILL NO. SB 138

NAME: GORDON OCHEN RIVER DATE: 1/19/89

ADDRESS: Box 100

PHONE: 662-2551

REPRESENTING WHOM? MOUNTAIN BANK, MBD

APPEARING ON WHICH PROPOSAL: SB 138

DO YOU: SUPPORT? AMEND? _____ OPPOSE? _____

COMMENT: see Exhibit #3

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Senate Bill 138 would amend the provision of the Montana Statute of Frauds to require loan commitments to be in writing to be enforceable. This bill will ensure certain levels of stability and certainty in commercial transactions which has been substantially eroded recently.

By requiring that only written agreements be valid, Senate Bill 138 will eliminate the problem of frivolous and unjustified counter claims being filed by debtors claiming that oral credit commitments existed beyond those stated in the written loan agreements. This has become a common practice for debtor attorneys in foreclosure and bankruptcy situations and it has the bottom line effect of protecting the bad customer at the expense of the good customer since the lenders operating costs are increased.

The purpose of this bill is to avoid misunderstandings, to improve communications, and to provide an additional element of certainty and stability in a transaction for both lender and borrower.

The lender's relationship with a borrower or a prospective borrower involves working closely with his customer to help him determine what his needs are and whether his business plan, farm plan or personal plans are sound and well founded. During the course of discussion, he may counsel, suggest, and voice opinions as to whether his financing plan or loan request may or may not be feasible.

Because of the danger of misunderstanding, and fear of subsequent potential litigation, lenders sometimes hesitate to be as frank and helpful as they would like to be. The borrower may interpret such conversations as an implied agreement that the lender will make the loan or undertake the financing being discussed, before the lender has enough information to make a firm decision, or before the lending officer gains approval from a loan committee, if such approval is required.

A borrower who assumes the loan is approved may make commitments to spend or invest funds, only to find subsequently that, for reasons which may become apparent upon closer analysis of the credit situation, the loan is not approved.

Such misunderstandings have cost both borrower and lender substantial sums of money, and have occasionally resulted in expensive litigation.

To avoid such situations, other states such as North Dakota, South Dakota, Minnesota, Georgia, Kansas, California and Washington have enacted, or are in the process of enacting, amendments to the Statute of Frauds, to require "an agreement to extend credit" to be in writing to be valid.

With the passage of this bill, lenders and borrowers will be put on notice that all such intended agreements should be in writing to be binding. The bill will facilitate more frank and open communications and avoid embarrassing and expensive misunderstandings.

SUBMITTED BY:

GORDON H. OCHENRIDER
Executive Vice President
Mountain Bank
Whitefish, Montana

Chairman
Commercial Lenders Committee
Montana Bankers Association

(This sheet to be used by those testifying on a bill)

EXHIBIT NO. 4

DATE 1/9/89

BILL NO. SB 138

NAME: CHIP GEOMANN

ADDRESS: Box 5418 Helena

PHONE: 442-8813

REPRESENTING WHOM? MT League of Savings Institutions

APPEARING ON WHICH PROPOSAL: SB 138

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENT: provide for certainty and reduce risk of litigation

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill)

EXHIBIT NO. 5

DATE 1/9/89

NAME: Norris Nichols

DATE 1/19 HB3

ADDRESS: Dept. of Revenue

PHONE: HHH-3474

REPRESENTING WHOM? Revenue

APPEARING ON WHICH PROPOSAL: H.B. 3

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENT:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)

EXHIBIT NO. 6
DATE: 1/19/89

NAME: Ben Hardewi BILL NO. HB3
DATE: 1/19/88

ADDRESS: Box 1714 Helema MT 59624

PHONE: 442 6600

REPRESENTING WHOM? MT Motor Carriers Assoc

APPEARING ON WHICH PROPOSAL: HB3

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

COMMENT: MMCA supports HB3 but would suggest
an amendment; page 10 line 22 following the word
transportation insert the word "ownership" -

Under the Motor Carrier Act, the owner of a regulated
commodity can transport that commodity in his own
vehicle without PSC authority. However if the ownership
of the commodity is ~~transported~~ a third party and it
is transported in a vehicle w/o PSC authority, it
is in violation of the act. The information on
ownership of the commodity as in the case of reported gasoline
will be beneficial in the enforcement of the Motor Carrier
Act

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Amendments to House Bill No. 3
Third Reading Copy

For the Committee on Business & Industry

Prepared by Mary McCue
January 19, 1989

1. Page 10, line 22.
Following: "transportation,"
Insert: "ownership,"

(This sheet to be used by those testifying on a bill)

EXHIBIT NO. 8

DATE 1/19/89

BILL NO. SB 137 ^{SB 1}

DATE: 1/17/88

NAME: Tom Harrison

ADDRESS: 2225 11th Ave Helena

PHONE: 442-6350

REPRESENTING WHOM? Mont Society of CPAs

APPEARING ON WHICH PROPOSAL: HB 137

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENT:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill)

EXHIBIT NO. 9

DATE 1/19/77

BILL NO. SB 137

NAME: Lynn Chenoweth

ADDRESS: Mitchell Bldg

PHONE: 444-2441

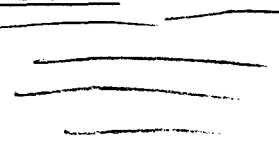
REPRESENTING WHOM? Dept of Revenue

APPEARING ON WHICH PROPOSAL: SB 137

DO YOU: SUPPORT? _____ AMEND? OPPOSE? _____

COMMENT: see attachment Exhibit #9

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.



TESTIMONY ON SB 137

BY LYNN CHENOWETH

DEPARTMENT OF REVENUE

(1) On page 9, line 15, it should read "subsection (2)" rather than "subsection (1)"

(2) On pages 9 and 10, the word "shall" in the current statute has been changed to "may" on seven different occasions. The Department feels that these changes do not alter the current reading of the statute and therefore has no objections. However, if this committee feels that these changes either alter the current statute or make the statute less clear, we recommend that an amendment be made to change the references to "may" back to "shall".

EXHIBIT NO. 10

DATE 1/19/89

BILL NO. SB137

Amendments to Senate Bill No. 137
First Reading Copy

For the Committee on Business and Industry

Prepared by Mary McCue
January 19, 1989

1. Page 9, line 15.
Strike: "(1)"
Insert: "(2)"

DATE

1/19/89

COMMITTEE ON

Business & Industry

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
GEORGE BENNETT	MONT. BURS ASSN	SB 136	X	
Phillip D Johnson	Mt Bhrs Assoc	SB 138	X	
George O. Chenoweth	MODERN BANK - WILKINSON	SB 134	X	
Young Bontliev	Valley Bank of Helena	SB 138	X	
J. Palodichuk	m. D. U.	137	X	
CHIP SEDMANN	Mt League of Savings Inst	SB 138	X	
Roger Trapp	M Indus Bankers	138	X	
JH Beck Boles	mt. Chamber of Commerce	SB 138	X	
ROBERT BELL	Mt Society of CPAs	SB 137	X	
Lynn Chenoweth	Dept. of Revenue	SB 137		Technical
MORRIS NICHOLS	Dept. of Recreation	H. 133	X	
Benthardan	Mt. Motor Carriers Assoc	HB 3	X	

(Please leave prepared statement with Secretary)