

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bruce D. Crippen, on January 20, 1989, at 10:00 a.m. in Room 325 of the Capitol.

ROLL CALL

Members Present: Chairman Bruce Crippen, V. Chairman Al Bishop, Senators Tom Beck, Mike Halligan, Bob Brown, Joe Mazurek, Loren Jenkins, R. J. "Dick" Pinsoneault, John Harp, Bill Yellowtail.

Members Excused: None

Members Absent: None

Staff Present: Staff Attorney Valencia Lane and Committee Secretary Rosemary Jacoby

Announcements/Discussion: None.

HEARING ON SENATE BILL 102

Presentation and Opening Statement by Sponsor: Senator R. J. "Dick" Pinsoneault of St. Ignatius, representing District #27, opened the hearing with the statement that he would like the bill to be held in committee, but that since the hearing had been scheduled he felt it should be conducted. He said the bill prohibits rental car companies from holding renters liable for damages to rental cars. He said the bill resulted from car rental contracts and the waiver in the contracts, which caused people up to \$12 a day for insurance on rental cars.

List of Testifying Proponents and What Group they Represent:

Kathy Irigoin, State Auditors Office Insurance
Department
Jacqueline Terrell, American Insurance Association

List of Testifying Opponents and What Group They Represent:

Steve Turkiewicz, Montana Auto Dealers
Peter Funk, Assistant Attorney General, representing
the Department of Justice and the Montana County
Attorneys

Testimony:

Kathy Irigoin said that while 60 to 80% of casualty policies cover rental cars, not all do. Because the contracts are not regulated, when a person rents a car he doesn't know if he is covered. This bill would clarify whether or not the person needs the insurance, she said.

Jacqueline Terrell urged support of the bill (Exhibit 1).

Steve Turkiewicz appeared as an opponent (See Exhibit 2) saying the Auto Dealers Association were concerned that the bill would place the entire burden on the rental companies. He said that he knew of no other state with laws as restrictive as this bill. He said it unfairly places additional costs on the businesses who rent cars. He felt the purpose of helping the consumers would be defeated by the fact that the car rents would have to increase. He asked car renting dealers to stand in show of opposition and about a dozen persons rose in the hearing. (See Exhibit 2.)

Peter Funk appeared as an opponent. He said that both the Attorney General's office and the County Attorneys Association were concerned about being placed in the role of a regulatory agency. He suggested amending the bill on page 10, line 6, changing the word "shall" to "may".

Questions From Committee Members: Senator Mazurek asked if the bill was introduced at the request of the Auditor's office, and Senator Pinsoneault said, no, the Consumer's Office after several complaints had been received.

Senator Bishop asked what would result from enactment of the bill and Steve Turkiewicz said the car renters would probably have to pay an additional \$3 or \$4 per day to cover the dealer's additional cost.

Closing by Sponsor: Senator Pinsoneault said he felt that testimony had demonstrated the complexity of the problem. He asked that the bill remain in committee for further study

as he didn't want to pass a bill out of committee that could cause more problems than it would solve. He suggested that the bill be tabled. The hearing was closed.

DISPOSITION OF SENATE BILL 102

Discussion: Senator Crippen said the sponsor has requested that the bill be tabled.

Amendments and Votes: None

Recommendation and Vote: Senator Pinsoneault MOVED that Senate Bill 102 BE TABLED. The MOTION CARRIED UNANIMOUSLY.

HEARING ON SENATE BILL 116

Presentation and Opening Statement by Sponsor: Senator Bill Norman of Missoula, representing District # 28, distributed a summary of the bill (Exhibit 3) and explained its purpose to provide that the judicial branch budget requests be submitted to the legislature without changes by the governor. He said that the three branches of government are supposed to be equal, but that the supreme court feels they are less than equal when the governor can amend their budget. If changes are made, the courts are merely notified and have no recourse, he said. They would like the budget submitted directly to the legislature like every other branch of government. He said the amount of the budget is about \$1.3 million, with \$200,000 additional money for boards, and \$2- or \$2.5 million dollars for district courts. He urged support of the bill.

List of Testifying Proponents and What Group they Represent:

Jim Oppedahl, Montana Supreme Court

List of Testifying Opponents and What Group They Represent:

None.

Testimony:

Jim Oppedahl said the bill was a simple bill with almost no consequences except that it would improve the judicial

process for the supreme court. He said the bill was proposed because the courts have a right of separation of powers, and to clarify and simplify the budget process. He urged support of the bill.

Questions From Committee Members: Senator Jenkins asked if it wasn't the duty of the Governor to present a balanced budget to the legislature. Mr. Oppedahl said yes, but that current law the court's budget is to be submitted to the legislature without changes.

Senator Jenkins asked if all requests didn't end up in a subcommittee. Jim Oppedahl said the subcommittee receives only the governor's proposal, not the original budget request. Senator Jenkins thought the subcommittee did see the original request and thought this wouldn't make any difference in the outcome. Jim Oppedahl said this bill would allow the legislature to see the LFAs and the court's proposals in addition to the governor's proposal and other recommendations.

Closing by Sponsor: Senator Norman closed urging the committee to pass the bill and allowing the supreme court to allow their request to be directly submitted to the legislature. He closed.

DISPOSITION OF SENATE BILL 116

Discussion: None.

Amendments and Votes: None.

Recommendation and Vote: Senator Mazurek MOVED that Senate Bill 116 DO PASS. The MOTION CARRIED UNANIMOUSLY.

HEARING ON SENATE BILL 112

Presentation and Opening Statement by Sponsor: Senator Joe Mazurek of Helena, representing District #23, said the bill was to replace the uniform fraudulent conveyances act with the uniform fraudulent transfer act, extending the act to personal property transfers. He said the act attempts to assure availability of credit against debtors who might seek to avoid prosecution by transfer of property. The concept

of the fraudulent transfers was changed by the federal government in 1979 and updated in 1984, he said. It is to recover property back for debt obligation. He said there had been little change in the law since 1918, while bankruptcy law and creditor-debtor relationships had changed. He reviewed the bill, its provisions and definitions.

List of Testifying Proponents and What Group They Represent:

Bob Pyfer, Montana Credit Unions League

List of Testifying Opponents and What Group They Represent:

None.

Testimony:

Bob Pyfer said he felt the act was to answer some of the questions that have come up since the 1918 act became law. He felt it would clarify the law.

Questions From Committee Members: Senator Jenkins said that, a few years ago when farm land was around \$500 an acre, many people who borrowed money are having to repay loans and the value of an acre is only \$200. Senator Mazurek said this bill would not apply to that case. He said it generally applied to unsecured creditors. If a \$1000 unsecured loan is not repaid, it would allow the creditor to collect through the debtor's property. If a person falsely created an extremely high value to avoid collection, this would apply.

Senator Crippen asked about the time lines and thought they were the same as the old act. Senator Mazurek said the old act did not have specific limitations.

Senator Crippen asked if a person transfers property while solvent, would this law apply a year later. Senator Mazurek said, under most circumstances the time limit would be 4 years.

Senator Crippen asked, if the creditor was insolvent at the time, what would his status be under present bankruptcy law and Senator Mazurek said he didn't know.

Closing by Sponsor: Senator Mazurek closed the hearing.

DISPOSITION OF HOUSE BILL 112

Discussion: After some discussion, Senator Mazurek asked that the bill be held for further study.

EXECUTIVE SESSION ON BILLS HEARD PREVIOUSLYSENATE BILL 92

Valencia Lane said the gray bill (Exhibit 4) had been prepared. She explained the amendments, saying they would make the provision that the birth parents would be informed. In addition, they would provide a 120-day choice about disclosure. If the birth parents allow the records to be open, they will be open, she said; but if the records are not open, the individual can still go to court to obtain them. She called attention to amendments on the first reading copy (Exhibit 5), and said that Senator Hager had requested them. Present law, she said, provided that pregnancy histories and health records are only available through the court.

Amendments and votes: Senator Beck MOVED THE AMENDMENTS in Exhibit 5. They were later WITHDRAWN.

Discussion of the bill: Valencia clarified the portion of the bill dealing with disclosure. Senator Mazurek asked if the bill provided for a registry and Valencia answered that it didn't.

Senator Mazurek asked if the birth father didn't want disclosure, would it be withheld. Valencia said filing for opening of records could be done at any time.

Discussion on searches for birth parents ensued. Leslie Taylor, representing the Department of Family Services, said she would need a FTE if her agency were required to conduct searches. She said there could be 100 requests a year and they would take time to conduct.

Senator Jenkins asked how out-of-state searches were conducted. Betty Bay, also of the department, said their searches were conducted mostly over the telephone and that there was no travel involved.

Senator Jenkins said the bill stated "personal contact," and asked if there was a new agreement on that. Betty Bay said yes. Bill Driscoll of the Montana Interagency Adoption

Counsel said that in Section 1, page 2, subsection 3 it requires the contact to be made in person, not by mail. Marilyn McKibben of Catholic Social Services said the contact must be made by an employee of the agency, which might mean that the agency might have to hire someone to represent them. Because cost is involved in a search, she said a reasonable fee should be allowed.

Senator Beck asked if the parent can't be found, would that keep the birth records closed. Valencia Lane said that was covered in subsection 5 on page 2, which was the same as Minnesota law. Prior to 1989, she said, the records were kept private, but not after 1989.

Senator Crippen asked about a Fiscal Note and Valencia said that none had been requested.

Senator Jenkins asked about the father's name. Valencia said it may not be mentioned in the certificate.

Senator Crippen, seeing many unanswered concerns, said he didn't want to appoint a subcommittee, but instead asked that Senators Halligan, Mazurek and Jenkins work with Valencia and others who were interested in coming to agreement on the provisions of the bill. He said the bill warranted further study and said the committee would postpone action until a further meeting.

SENATE BILL 103

Amendments and votes: Senator Jenkins moved an amendment that had been suggested at the time of the hearing. On page 1, line 13, he moved to insert "an attempt to commit or the commission of", and inserting the same into the title. The MOTION CARRIED UNANIMOUSLY. (See Exhibit 6.)

Motions and votes: Senator Brown MOVED that Senate Bill 103 DO PASS AS AMENDED. Senator Harp said there had been discussion about the constitutionality and about the Faust case being the law of the land, with full legal redress. He stated we would still have access to the courts. After further discussion, the bill PASSED BY A VOTE OF 7 to 3, with Senators Beck, Mazurek and Crippen voting NO.

SENATE BILL 107: After discussion of possible amendments (Exhibit 7) it was decided to postpone action on the bill.

SENATE BILL 108

Discussion of the bill included comments that the people from Great Falls wanting to add the option of hanging for persons to be executed and the fact that preparations for conducting a hanging took longer than for lethal injections.

Ms. Kradolfer said the bill provides that a person must make a choice of type of execution. Senator Crippen said he had a problem with the defendant having to make that choice at the time of his sentencing because it was an emotional time, and felt he should be given some time to make the decision.

Senator Beck asked if the judge decided when the sentencing would take place. Ms. Kradolfer said there was a statutory limit of 60 days for review. She said the department was happy with the bill as drafted.

Senator Pinsoneault MOVED that SENATE BILL 108 DO PASS. The MOTION CARRIED by a vote of 8 to 2, with Senators Beck and Crippen VOTING NO.

SENATE BILL 135

Senator Halligan MOVED that SENATE BILL 135 DO PASS. The MOTION CARRIED by a vote of 8 to 2, with Senators Mazurek and Crippen VOTING NO.

SENATE BILL 122

Senator Harp MOVED the Mazurek Amendments (Exhibit 8) presented to the committee at a previous meeting. Valencia explained them. The MOTION CARRIED UNANIMOUSLY.

Senator Harp MOVED that Senate Bill 122 DO PASS AS AMENDED. The MOTION CARRIED UNANIMOUSLY.

SENATE BILL 106

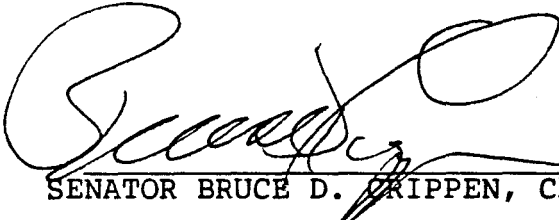
Senator Halligan MOVED that Senate Bill 106 DO PASS. The MOTION CARRIED UNANIMOUSLY.

SENATE BILL 10

Senate Bill 10 was discussed and the committee agreed to give the bill further study.

ADJOURNMENT

Adjournment At: 11:55 a.m.



SENATOR BRUCE D. CRIPPEN, Chairman

BDC:rj

minrj.120

ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date Jan. 20, 1989

NAME	PRESENT	ABSENT	EXCUSED
SENATOR CRIPPEN	✓		
SENATOR BECK	✓		
SENATOR BISHOP	✓		
SENATOR BROWN	✓		
SENATOR HALLIGAN	✓		
SENATOR HARP	✓		
SENATOR JENKINS	✓		
SENATOR MAZUREK	✓		
SENATOR PINSONEAULT	✓		
SENATOR YELLOWTAIL	✓		

Each day attach to minutes.

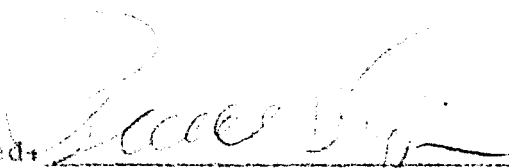
STANDING COMMITTEE REPORT

January 20, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration SB 116 (first reading copy -- white), respectfully report that SB 116 do pass.

DO PASS

Signed: 

Bruce D. Crippen, Chairman

J.C.
1/20/89
4:14 P.M.

STANDING COMMITTEE REPORT

January 26, 1989

HON. PRESIDENT:

We, your committee on Judiciary, having had under consideration SB 103 (first reading copy -- white), respectfully report that SB 103 be amended and as so amended do pass:

1. Title, line 7.

Following: "FROM"

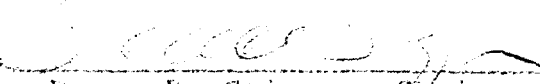
Insert: "AN ATTEMPT TO COMMIT OR THE COMMISSION OF"

2. Page 1, line 13.

Following: "from"

Insert: "an attempt to commit or the commission of"

AND AS SO AMENDED DO PASS

Signed: 

Bruce D. Crippen, Chairman

Handwritten:
J.C. 1/20/89
4:14 P.M.

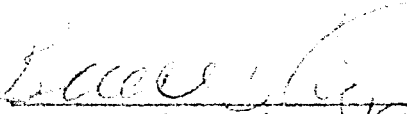
STANDING COMMITTEE REPORT

January 20, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration SE 108 (first reading copy -- white), respectfully report that SE 108 do pass.

DO PASS

Signed: 
Bruce D. Crippen, Chairman

D.C.
1/20/89
4:40 P

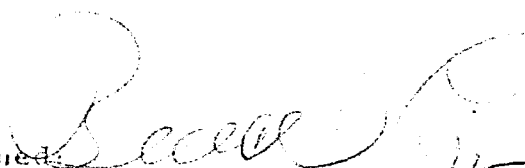
STANDING COMMITTEE REPORT

January 20, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration SB 135 (first reading copy -- white), respectfully report that SB 135 do pass.

DO PASS

Signed: 

Bruce D. Clippert, Chairman

J.C.
1/20/89
4:14 P.M.

STANDING COMMITTEE REPORT

January 20, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration SB 122 (first reading copy -- white), respectfully report that SB 122 be amended and as so amended do pass:


1. Page 3, line 7.

Following: "to"

Strike: "causes of action arising"

Insert: "offenses occurring"

AND AS SO AMENDED DO PASS

Signed: 
Bruce D. Crippen, Chairman

J.C. 189
1/20/89
4:14 P.M.

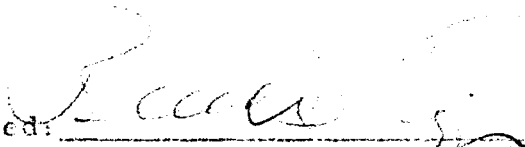
STANDING COMMITTEE REPORT

January 20, 1989

HON. PRESIDENT:

We, your committee on Judiciary, having had under consideration SB 106 (first reading copy -- white), respectfully report that SB 106 do pass.

DO PASS

Signed: 

Bruce D. Crippen, Chairman

D.C.
1/20/89
4:14 p.m.

STATEMENT OF
AMERICAN INSURANCE ASSOCIATION
BY
JACQUELINE N. TERRELL
RE: SB 102

Mr. Chairman and members of the committee:

My name is Jacqueline N. Terrell. I am a lawyer from Helena and a lobbyist for the American Insurance Association. The American Insurance Association is a national trade association that promotes the economic, legislative, and public standing of its some 180-member property-casualty insurance companies. The Association represents its participating companies before federal and state legislatures on matters of industry concern.

The American Insurance Association strongly supports this straight forward and effective NAIC model law to deal with consumer complaints and confusion over rental car insurance.

The model law would shift financial responsibility for damaged rental cars from insurance consumers to the rental car industry.

Currently, consumers may be held responsible for damage to rented cars unless they buy "collision damage waivers" from car rental companies or unless their own auto insurance covers the loss. Confusion and complaints have arisen because the waivers, which often cost about \$10 per day, are becoming increasingly expensive, contain a number of loopholes, and often unnecessarily duplicate protection provided by consumers' auto insurance policies.

Under the NAIC proposal, all the costs of renting a car would be paid for when you rent the car, rather than paid, in part, by auto insurance and unfairly subsidized by people who may never rent cars through increased auto insurance premiums.

The NAIC law will help hold down the cost of auto insurance, which is being used more and more to cover damage claims to rental cars. Instead of having someone's family auto insurance subsidize the car rental industry through auto insurance rates, this proposal puts the costs of rented car losses where they belong -- with the car rental companies.

Submitted to Senate Judiciary Committee for hearing on Senate Bill 102, January 20, 1989, 10 a.m.

Respectfully submitted,



Jacqueline N. Terrell

MONTANA AUTOMOBILE DEALERS ASSOCIATION
INC.

501 N. SANDERS

HELENA, MONTANA 59601

PHONE 442-1233

Mr. Chairman, and Members of the Committee, for the record my name is Steve Turkiewicz, and I represent the Montana Auto Dealers Association. On behalf of the Montana Auto Dealers, we oppose Senate Bill 102.

In Montana, several auto dealers provide car rentals; they may be an independent or they may be a franchisee of one of the major companies. However, they are, in all cases, Montana mainstreet businesspeople providing a service for the tourist and business traveler alike.

We are very concerned about the provisions of Senate Bill 102 and the effects of those provisions will have on the ability of our local Montana auto dealers to continue to operate their rental businesses and the costs of renting a car to the tourist or traveling businessperson.

Our interpretation of the SB102 as drafted, literally places the entire burden for collision damage to a rental vehicle on the rental company except in certain circumstances. To our knowledge, there is no state that has provisions that are as restrictive as those contained in this bill.

In the event one of the conditions for exception for driver liability is present, it appears that only a court proceeding will be able to determine if the driver damaged the car through, "...willful misconduct; driving in a speed contest; or use of the private passenger automobile while committing or otherwise engaged in a crime in which the private passenger automobile is substantially related to the nature of the crime..." What ever that means? And while the determination process is on its way, the rental car company has a revenue producing vehicle off the streets and repair costs it must shoulder.

The provisions for enforcement seem terribly harsh. The Department of Commerce is granted a wide range of powers including the power to subpoena. It seems somewhat ironic that of the bill's 13 pages, over 9 pages are dedicated to the enforcement of a prohibited activity on the part of rental companies, an activity that is designed to protect their financial investment from "wreckage".

This bill unfairly places the total burden of costs of collision damage for rental cars squarely on the financial shoulders of the rental company. But the rental company doesn't have a safe full of money to cover these additional costs. The additional costs are going to be absorbed by every individual who rents a car in the state of Montana. It appears that in the attempt to help the consumer, this bill is really anti-consumer.

We respectfully request that this Committee's recommendation on Senate Bill 102 be Do Not Pass.

Thank you Mr. Chairman and the Committee

SB 116

Norman
EX

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO THE STATE BUDGET PROCESS AND THE CONSTITUTIONAL SEPARATION OF POWERS AMONG THE SEPARATE BRANCHES OF STATE GOVERNMENT; PROVIDING THAT JUDICIAL BRANCH BUDGET REQUESTS BE SUBMITTED TO THE LEGISLATURE WITHOUT CHANGES BY THE GOVERNOR; AND AMENDING SECTION 17-7-122, MCA."

This bill would treat the biennial budget proposals of the Judicial Branch in the same manner as Legislative Branch budget proposals are now treated.

Under the bill, the Judicial budget proposal would continue to be submitted to the Governor's Office of Budget and Program Planning and to the Legislative Fiscal Analyst. What would change under the bill is that the Governor's Office would include the judicial budget proposal in the Governors Budget without changes.

The bill is necessary for two reasons:

-- To ensure that the Judicial Branch is able to present its own budget proposal for the biennium directly to the Legislature without the original proposal being modified by another branch of government; and

-- To simplify the budget process during Legislative hearings and deliberations on the Judicial budget proposal.

The bill does not change the fact that the Legislative Fiscal Analyst will closely examine Judicial budget proposals and make recommendations to the Legislature about funding issues. It also does not change the fact that the Legislature ultimately sets the judicial budget.

The Judiciary will not receive higher appropriations because of the bill. The Judiciary will, however, be able to clearly present directly to the Legislature its budgetary needs and proposals.

51st Legislature

1 SENATE BILL NO. 92
2 INTRODUCED BY MEYER
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ~~TO~~--~~ALLOW~~--~~AN~~--~~ADOPTED~~
5 ~~PERSON~~--~~TO~~--~~HAVE~~--~~ACCESS~~--~~TO~~--~~HIS~~--~~ORIGINAL~~--~~BIRTH~~--~~RECORDS~~--~~UPON~~
6 DEMAND ESTABLISHING A PROCEDURE FOR ADOPTED PERSONS TO GAIN
7 ACCESS TO THEIR ORIGINAL BIRTH RECORDS; REQUIRING THE
8 DEPARTMENT OF FAMILY SERVICES TO NOTIFY BIRTH PARENTS OF A
9 REQUEST BY AN ADOPTED PERSON FOR HIS ORIGINAL BIRTH RECORDS;
10 ALLOWING A BIRTH PARENT TO OBJECT OR CONSENT TO THE
11 DISCLOSURE; ALLOWING FOR DISCLOSURE BY THE DEPARTMENT OF
12 HEALTH AND ENVIRONMENTAL SCIENCES IN CERTAIN CASES;
13 REQUIRING A COURT ORDER FOR DISCLOSURE IN CERTAIN CASES; AND
14 AMENDING SECTIONS 2-6-104, 40-6-120, 40-6-123, 40-8-126,
15 50-15-112, 50-15-114, 50-15-206, 50-15-207, 50-15-304,
16 53-4-306, AND 53-4-404, MCA."

17
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
19 NEW SECTION. SECTION 1. ACCESS TO ADOPTION RECORDS.
20 (1) AN ADOPTED PERSON WHO IS 21 YEARS OF AGE OR OLDER MAY
21 REQUEST THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES
22 TO DISCLOSE THE INFORMATION ON THE ADOPTED PERSON'S ORIGINAL
23 BIRTH CERTIFICATE. THE DEPARTMENT OF HEALTH AND
24 ENVIRONMENTAL SCIENCES SHALL, WITHIN 5 DAYS OF RECEIPT OF
25 THE REQUEST, NOTIFY THE DEPARTMENT IN WRITING OF THE REQUEST



1 BY THE ADOPTED PERSON AND OF THE IDENTITY OF AND OTHER
2 IDENTIFYING INFORMATION REGARDING ANY PERSON LISTED ON THE
3 ORIGINAL BIRTH CERTIFICATE AS A PARENT OF THE ADOPTED
4 PERSON.

5 (2) WITHIN 6 MONTHS AFTER RECEIVING NOTICE OF THE
6 REQUEST OF THE ADOPTED PERSON, THE DEPARTMENT SHALL MAKE
7 COMPLETE AND REASONABLE EFFORTS TO NOTIFY EACH BIRTH PARENT
8 IDENTIFIED ON THE ORIGINAL BIRTH CERTIFICATE OF THE ADOPTED
9 PERSON. THE DEPARTMENT MAY CHARGE A REASONABLE FEE TO THE
10 ADOPTED PERSON FOR THE COST OF MAKING A SEARCH PURSUANT TO
11 THIS SUBSECTION. THE DEPARTMENT OF SOCIAL AND REHABILITATION
12 SERVICES, THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL
13 SCIENCES, AND EVERY LICENSED CHILD-PLACING AGENCY IN THE
14 STATE SHALL COOPERATE WITH THE DEPARTMENT IN EFFORTS TO
15 NOTIFY AN IDENTIFIED PARENT. ALL COMMUNICATIONS UNDER THIS
16 SUBSECTION ARE CONFIDENTIAL.

17 (3) FOR PURPOSES OF SUBSECTION (2), "NOTIFY" MEANS A
18 PERSONAL AND CONFIDENTIAL CONTACT WITH EACH BIRTH PARENT
19 NAMED ON THE ORIGINAL BIRTH CERTIFICATE OF THE ADOPTED
20 PERSON. THE CONTACT MAY NOT BE BY MAIL AND MUST BE MADE BY
21 AN EMPLOYEE OR AGENT OF THE LICENSED CHILD-PLACING AGENCY
22 THAT HANDLED THE PERTINENT ADOPTION OR BY AN EMPLOYEE OR
23 AGENT OF ANOTHER LICENSED CHILD-PLACING AGENCY DESIGNATED BY
24 THE DEPARTMENT. THE CONTACT MUST BE EVIDENCED BY FILING WITH
25 THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES AN

1 AFFIDAVIT OF NOTIFICATION EXECUTED BY THE PERSON WHO
2 NOTIFIED EACH BIRTH PARENT, CERTIFYING THAT EACH BIRTH
3 PARENT WAS GIVEN THE FOLLOWING INFORMATION:

4 (A) THE NATURE OF THE INFORMATION REQUESTED BY THE
5 ADOPTED PERSON;

6 (B) THE DATE OF THE ADOPTED PERSON'S REQUEST;

7 (C) THE RIGHT OF THE BIRTH PARENT TO FILE, WITHIN 120
8 DAYS OF RECEIPT OF THE NOTICE, AN AFFIDAVIT WITH THE
9 DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES STATING THAT
10 THE INFORMATION ON THE ORIGINAL BIRTH CERTIFICATE MAY NOT BE
11 DISCLOSED;

12 (D) THE RIGHT OF THE BIRTH PARENT TO FILE A CONSENT TO
13 DISCLOSURE WITH THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL
14 SCIENCES AT ANY TIME; AND

15 (E) THE EFFECT OF A FAILURE OF THE BIRTH PARENT TO
16 FILE EITHER A CONSENT TO DISCLOSURE OR AN AFFIDAVIT STATING
17 THAT THE INFORMATION ON THE ORIGINAL BIRTH CERTIFICATE MAY
18 NOT BE DISCLOSED.

19 (4) (A) IF THE DEPARTMENT CERTIFIES TO THE DEPARTMENT
20 OF HEALTH AND ENVIRONMENTAL SCIENCES THAT THE DEPARTMENT WAS
21 NOT ABLE, WITHIN 6 MONTHS, TO NOTIFY A BIRTH PARENT
22 IDENTIFIED ON THE ORIGINAL BIRTH CERTIFICATE AND IF NEITHER
23 IDENTIFIED BIRTH PARENT HAS AT ANY TIME FILED AN UNREVOKED
24 CONSENT TO DISCLOSURE WITH THE DEPARTMENT OF HEALTH AND
25 ENVIRONMENTAL SCIENCES, THE INFORMATION MAY BE DISCLOSED AS

1 FOLLOWS:

2 (I) IF THE PERSON WAS ADOPTED PRIOR TO OCTOBER 1,
3 1989, HE MAY PETITION THE APPROPRIATE COURT FOR DISCLOSURE
4 OF THE ORIGINAL BIRTH CERTIFICATE AND THE COURT SHALL ORDER
5 THE CERTIFICATE TO BE DISCLOSED IF, AFTER CONSIDERATION OF
6 THE INTERESTS OF ALL KNOWN PERSONS INVOLVED, THE COURT
7 DETERMINES THAT DISCLOSURE OF THE INFORMATION WOULD BE OF
8 GREATER BENEFIT THAN NONDISCLOSURE.

9 (II) IF THE PERSON WAS ADOPTED ON OR AFTER OCTOBER 1,
10 1989, THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES
11 SHALL RELEASE THE REQUESTED INFORMATION TO THE ADOPTED
12 PERSON.

13 (B) IF EITHER BIRTH PARENT IDENTIFIED ON THE ORIGINAL
14 BIRTH CERTIFICATE HAS AT ANY TIME FILED WITH THE DEPARTMENT
15 OF HEALTH AND ENVIRONMENTAL SCIENCES AN UNREVOKED AFFIDAVIT
16 STATING THAT THE INFORMATION ON THE ORIGINAL BIRTH
17 CERTIFICATE MAY NOT BE DISCLOSED, THE DEPARTMENT OF HEALTH
18 AND ENVIRONMENTAL SCIENCES MAY NOT DISCLOSE THE INFORMATION
19 TO THE ADOPTED PERSON UNTIL THE AFFIDAVIT IS REVOKED BY THE
20 FILING OF A CONSENT TO DISCLOSURE BY THAT PARENT.

21 (5) IF, WITHIN 6 MONTHS, THE DEPARTMENT CERTIFIES TO
22 THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES THE
23 NOTIFICATION OF EACH BIRTH PARENT IDENTIFIED ON THE ORIGINAL
24 BIRTH CERTIFICATE PURSUANT TO SUBSECTION (2), THE DEPARTMENT
25 OF HEALTH AND ENVIRONMENTAL SCIENCES SHALL DISCLOSE THE

1 INFORMATION REQUESTED BY THE ADOPTED PERSON 121 DAYS AFTER
2 THE DATE OF THE LATEST NOTICE TO EITHER PARENT. THIS
3 DISCLOSURE WILL OCCUR IF AT ANY TIME DURING THE 120 DAYS
4 EACH BIRTH PARENT IDENTIFIED ON THE ORIGINAL BIRTH
5 CERTIFICATE HAS FILED A CONSENT TO DISCLOSURE WITH THE
6 DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES AND THE
7 CONSENT TO DISCLOSURE HAS NOT BEEN REVOKED DUE TO THE
8 SUBSEQUENT FILING BY A BIRTH PARENT OF AN AFFIDAVIT STATING
9 THAT THE INFORMATION MAY NOT BE DISCLOSED.

10 (6) NOTWITHSTANDING THE PROVISIONS OF SUBSECTIONS (4)
11 AND (5), IF A BIRTH PARENT NAMED ON THE ORIGINAL BIRTH
12 CERTIFICATE OF AN ADOPTED PERSON HAS DIED AND AT ANY TIME
13 PRIOR TO THE DEATH THE PARENT HAS FILED AN UNREVOKED
14 AFFIDAVIT WITH THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL
15 SCIENCES STATING THAT THE INFORMATION ON THE ORIGINAL BIRTH
16 CERTIFICATE MAY NOT BE DISCLOSED, THE ADOPTED PERSON MAY
17 PETITION THE COURT OF ORIGINAL JURISDICTION OF THE ADOPTION
18 PROCEEDING FOR DISCLOSURE OF THE ORIGINAL BIRTH CERTIFICATE.
19 THE COURT SHALL GRANT THE PETITION IF, AFTER CONSIDERATION
20 OF THE INTERESTS OF ALL KNOWN PERSONS INVOLVED, THE COURT
21 DETERMINES THAT DISCLOSURE OF THE INFORMATION WOULD BE OF
22 GREATER BENEFIT THAN NONDISCLOSURE.

23 **Section 2.** Section 2-6-104, MCA, is amended to read:
24 "2-6-104. Records of officers open to public
25 inspection. Except as provided in 40-8-126, 50-15-304

1 [SECTION 1], and 27-18-111, the public records and other
2 matters in the office of any officer are at all times during
3 office hours open to the inspection of any person."

4 **Section 3.** Section 40-6-120, MCA, is amended to read:

5 "40-6-120. Hearings and records -- confidentiality.

6 Notwithstanding any other law concerning public hearings and
7 records, any hearing or trial held under this part shall be
8 held in closed court without admittance of any person other
9 than those necessary to the action or proceeding. All
10 papers and records, other than the final judgment,
11 pertaining to the action or proceeding, whether part of the
12 permanent record of the court or of a file in any agency of
13 the state or of any political subdivision or elsewhere, are
14 subject to inspection only:

15 (1) upon consent of the court and all interested
16 persons or in exceptional cases only upon an order of the
17 court for good cause shown; or

18 (2) as provided in 50-15-304 [SECTION 1]."

19 **Section 4.** Section 40-6-123, MCA, is amended to read:

20 "40-6-123. Birth records. (1) Upon order of a court of
21 this state or upon request of a court of another state, the
22 department of health and environmental sciences shall
23 prepare a substitute certificate of birth consistent with
24 the findings of the court and shall substitute the new
25 certificate for the original certificate of birth.

1 (2) The fact that the father and child relationship
2 was declared after the child's birth shall not be
3 ascertainable from the new certificate but the actual place
4 and date of birth shall be shown.

5 (3) The evidence upon which the new certificate was
6 made and the original birth certificate shall be kept in a
7 sealed and confidential file and shall be subject to
8 inspection only:

9 (a) upon consent of the court and all interested
10 persons or in exceptional cases only upon an order of the
11 court for good cause shown; or

12 (b) as provided in 50-15-304 [SECTION 1]."

13 **Section 5.** Section 40-8-126, MCA, is amended to read:

14 "40-8-126. Confidentiality of record and proceedings.

15 (1) Unless the court shall otherwise order, all hearings
16 held in proceedings under this part shall be confidential
17 and shall be held in closed court without admittance of any
18 person other than interested parties and their counsel.

19 (2) All papers and records pertaining to the adoption
20 shall be kept as a permanent record of the court and
21 withheld from inspection. No person shall have access to
22 such records except:

23 (a) for good cause shown, on order of the judge of the
24 court in which the decree of adoption was entered; or

25 (b) as provided in 50-15-206 and 50-15-304 [SECTION

1 1].

2 (3) All files and records pertaining to said adoption
3 proceedings in the county departments of public welfare, the
4 department of social and rehabilitation services, the
5 department of family services, or any authorized agencies
6 shall be confidential and withheld from inspection except
7 upon order of court for good cause shown or as provided in
8 50-15-206 and 50-15-304 [SECTION 1]."

9 **Section 6.** Section 50-15-112, MCA, is amended to read:

10 "50-15-112. Inspection of records and issuance of
11 copies limited. (1) The department may not permit inspection
12 of the records or issue copies of a certificate except as
13 provided in 50-15-304 [SECTION 1] or unless it is satisfied
14 that the applicant has a direct and tangible interest in the
15 data recorded and that the information is necessary for the
16 determination of personal or property rights.

17 (2) "Tangible interest" includes but is not limited to
18 the interests of the persons described in 50-15-206 for the
19 purposes of custody actions, social security eligibility
20 determinations, or Indian tribal enrollment determinations."

21 **Section 7.** Section 50-15-114, MCA, is amended to read:

22 "50-15-114. Unlawful acts and penalties. (1) It is
23 unlawful to disclose data in the vital statistics records of
24 the department, local registrars, or county clerk and
25 recorder except as provided in 50-15-304 [SECTION 1] or

1 unless disclosure is otherwise authorized by law and
2 approved by the department.

3 (2) A person shall be fined not more than \$1,000,
4 imprisoned not more than 1 year, or both, if:

5 (a) he willfully and knowingly makes any false
6 statement in a report, record, or certificate required to be
7 filed by law or in an application for an amendment thereof
8 or willfully and knowingly supplies false information
9 intending that such information be used in the preparation
10 of any such report, record, or certificate or amendment;

11 (b) without lawful authority and with the intent to
12 deceive, he makes, alters, amends, or mutilates any report,
13 record, or certificate required to be filed under law or a
14 certified copy of the report, record, or certificate;

15 (c) he willfully and knowingly uses or attempts to use
16 or furnish to another for use, for any purpose of deception,
17 any certificate, record, report, or certified copy made,
18 altered, amended, or mutilated;

19 (d) with the intention to deceive, he willfully uses
20 or attempts to use any birth certificate or certified copy
21 of a birth record knowing that such certificate or certified
22 copy was issued upon a record which is false in whole or in
23 part or which relates to the birth of another person;

24 (e) he willfully and knowingly furnishes a birth
25 certificate or certified copy of a birth record with the

1 intention that it be used by a person other than the person
2 to whom the birth record relates.

3 (3) A person shall be fined not less than \$25 or more
4 than \$100, imprisoned for not more than 30 days, or both,
5 if:

6 (a) he knowingly transports or accepts for
7 transportation, interment, or other disposition a dead body
8 without an accompanying permit as provided by law;

9 (b) he refuses to provide information required by law;

10 (c) he willfully neglects or violates any of the
11 provisions of law or refuses to perform any of the duties
12 imposed upon him by law."

13 **Section 8.** Section 50-15-206, MCA, is amended to read:

14 "50-15-206. Permissible disclosure of illegitimate
15 birth. (1) Disclosure of illegitimacy of birth or
16 information from which illegitimacy can be ascertained may
17 be made only:

18 (a) upon demand of an adopted person for his personal
19 sealed adoption file, as provided in 50-15-304 [SECTION 1];

20 (b) upon an order of a court to determine personal
21 or property rights; An adopted person of legal age may apply
22 to the court for such an order;

23 (c) upon request of the department of social and
24 rehabilitation services, the department of family services,
25 or a licensed adoption agency for purposes of custody

1 action, social security eligibility determinations, or
2 Indian tribal enrollment determinations; or

3 ~~(c)~~(d) upon request of the natural parent during the
4 child's minority unless the child has been placed for
5 adoption.

6 (2) Except when an order of the court is sought, prior
7 to disclosure, the requesting party must submit in writing
8 to the department:

9 (a) proof of identity when appropriate;

10 (b) the need for the information; and

11 (c) the specific purpose for which the information is
12 to be used. The information may be used only for that
13 purpose."

14 **Section 9.** Section 50-15-207, MCA, is amended to read:

15 "50-15-207. New birth certificate upon proof of
16 legitimation. Upon receipt of proof of legitimation, the
17 department shall prepare a new birth certificate in the new
18 name of the person legitimated. Evidence upon which the new
19 certificate is based and the original birth certificate
20 shall be sealed and may be opened only as provided in
21 50-15-304 [SECTION 1] or upon court order. In case of
22 legitimation, the department shall substitute records in the
23 way provided in 50-15-304(2) for records of adoption."

24 **Section 10.** Section 50-15-304, MCA, is amended to
25 read:

1 "50-15-304. Substitute birth certificate for person
2 adopted. (1) The procedure for issuing a substitute birth
3 certificate for a person born in Montana and adopted is as
4 follows:

5 (a) Before the 16th day of the month following the
6 order of adoption, the clerk of the district court shall
7 forward a certified copy of the final order of adoption to
8 the department or the department may accept a certified copy
9 of a final order of adoption from a court of competent
10 jurisdiction of a foreign state of the United States or a
11 tribal court of competent jurisdiction.

12 (b) The department shall prepare a substitute
13 certificate containing:

14 (i) the new name of the adopted person;

15 (ii) the true date and place of birth and sex of the
16 adopted person;

17 (iii) statistical facts concerning the adoptive parents
18 in place of the natural parents;

19 (iv) the words "department of health and environmental
20 sciences" substituted for the words "attendant's own
21 signature"; and

22 (v) dates of recording as shown on the original birth
23 certificate.

24 (2) The procedure for recording a substitute
25 certificate of birth for a person born in Montana and

1 adopted is as follows:

2 (a) The department shall send copies of the substitute
3 certificate to the local registrar and to the county clerk
4 and recorder.

5 (b) The local registrar and county clerk and recorder
6 shall immediately enter the substitute birth certificate in
7 its files and forward copies of the original birth record to
8 the department.

9 (c) The department shall seal original birth records
10 and open them only on-demand-of-the--adopted--person--if--of
11 legal--age-or on order of a court OR AS PROVIDED IN [SECTION
12 1].

13 (3) On receipt of a certified copy of a court order
14 annulling an adoption, the department shall restore the
15 original certificate to its place in its files and notify
16 the local registrar and county clerk and recorder."

17 **Section 11.** Section 53-4-306, MCA, is amended to read:

18 "53-4-306. Records to be confidential. All records
19 regarding subsidized adoption shall be confidential and may
20 be disclosed only in accordance with the provisions of
21 40-8-122 40-8-126 and 50-15-304 [SECTION 1]."

22 **Section 12.** Section 53-4-404, MCA, is amended to read:

23 "53-4-404. Requirements for licensure. The department
24 must issue licenses to agencies meeting the following
25 minimum requirements:

1 (1) The chief function of the agency must be the care
2 and placement of minor children.

3 (2) The agency must operate on a nonprofit basis and
4 be financially responsible in and for its operation.

5 (3) The directing or managing personnel of the agency
6 must be qualified both on the basis of professional
7 education and personality.

8 (4) Complete records must be kept of both the minor
9 children and adopting parents with which the agency deals,
10 and such. Such records must be confidential and may be
11 disclosed only in accordance with the provisions of 40-8-126
12 and ~~50-15-304~~ [SECTION 1].

13 (5) The agency must follow the practice of verifying
14 that the child is legally available for adoption and of not
15 completing the adoption until the child has been in the
16 proposed adoptive home for a trial period.

17 (6) The agency must have and use facilities for making
18 a social study of the child and proposed adoptive parents
19 before placement of the child, particularly with regard to:

20 (a) the physical and mental health, emotional
21 stability, and personal integrity of the adopting parents
22 and their ability to promote the child's welfare; and

23 (b) the physical and mental condition of the child and
24 its family background.

25 (7) The agency must agree to cooperate with courts

1 having jurisdiction in adoptive matters and with other
2 public agencies having to deal with the welfare of minor
3 children.

4 (8) Any such agency must annually submit a full,
5 complete, and true financial statement to the department,
6 and such statement shall contain a full accounting of the
7 operations of such agency during the preceding year."

8 NEW SECTION. SECTION 13. CODIFICATION INSTRUCTION.
9 [SECTION 1] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART
10 OF TITLE 40, CHAPTER 8, PART 1, AND THE PROVISIONS OF TITLE
11 40, CHAPTER 8, PART 1, APPLY TO [SECTION 1].

-End-

Amendments to Senate Bill No. 92
First Reading Copy (White)

Requested by Senator Hager (second version)
For the Committee on Judiciary

Prepared by Valencia Lane
January 18, 1989

1. Title, lines 4 through 6.

Following: "AN ACT" on line 4

Strike: the remainder of line 4 through "DEMAND" on line 6

Insert: "ESTABLISHING A PROCEDURE FOR ADOPTED PERSONS TO GAIN ACCESS TO THEIR ORIGINAL BIRTH RECORDS; REQUIRING THE DEPARTMENT OF FAMILY SERVICES TO NOTIFY BIRTH PARENTS OF A REQUEST BY AN ADOPTED PERSON FOR HIS ORIGINAL BIRTH RECORDS; ALLOWING A BIRTH PARENT TO OBJECT OR CONSENT TO THE DISCLOSURE; ALLOWING FOR DISCLOSURE BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES IN CERTAIN CASES; REQUIRING A COURT ORDER FOR DISCLOSURE IN CERTAIN CASES"

2. Title, line 7.

Following: line 6

Strike: "40-8-126"

Insert: "40-8-121"

3. Page 1.

Following: line 10

Insert: "NEW SECTION. Section 1. Access to birth records. (1) An adopted person who is 18 years of age or older may request in writing that the department of health and environmental sciences disclose the information on the adopted person's original birth certificate. The request must be accompanied by the fee required in 50-15-111.

(a) If either birth parent named on the original birth certificate has filed a consent to disclosure of the information on the original birth certificate with the department of health and environmental sciences that has not been revoked pursuant to subsection (1)(b), the department of health and environmental sciences shall release the requested information to the adopted person.

(b) If either birth parent identified on the original birth certificate has at any time filed with the department of health and environmental sciences an unrevoked affidavit stating that the information on the original birth certificate may not be disclosed, the department of health and environmental sciences may not disclose the information to the adopted person until the affidavit is revoked by the filing of a consent to disclosure by that parent or upon order of a court.

(c) If the birth parents named on the original birth certificate have not filed either a consent to disclosure or an affidavit stating that the information on the original birth certificate may not be disclosed, the provisions of subsections (2) through (7) apply. However, if at any time before the information

is released under those subsections either birth parent files an affidavit stating that the information may not be disclosed, the information may not be released except as provided in subsection (1)(b).

(2) The department of health and environmental sciences shall, within 5 days of receipt of the request, notify the department in writing of the request by the adopted person and of the identity of and other identifying information regarding any person listed on the original birth certificate as a parent of the adopted person.

(3) Within 6 months after receiving notice of the request of the adopted person, the department shall make complete and reasonable efforts to notify each birth parent identified on the original birth certificate of the adopted person. The department may charge a reasonable fee to the adopted person for the cost of making a search pursuant to this subsection. The department of social and rehabilitation services, the department of health and environmental sciences, and every licensed child-placing agency in the state shall cooperate with the department in efforts to notify an identified parent. All communications under this subsection are confidential.

(4) For purposes of subsection (3), "notify" means a personal and confidential contact with each birth parent named on the original birth certificate of the adopted person. The contact may not be by mail and must be made by an employee or agent of the department or the licensed child-placing agency that handled the pertinent adoption or by an employee or agent of another licensed child-placing agency designated by the department. The contact must be evidenced by filing with the department of health and environmental sciences an affidavit of notification executed by the person who notified each birth parent, certifying that each birth parent was given the following information:

(a) the nature of the information requested by the adopted person;

(b) the date of the adopted person's request;

(c) the right of the birth parent to file, within 120 days of receipt of the notice, an affidavit with the department of health and environmental sciences stating that the information on the original birth certificate may not be disclosed;

(d) the right of the birth parent to file a consent to disclosure with the department of health and environmental sciences at any time; and

(e) the effect of a failure of the birth parent to file either a consent to disclosure or an affidavit stating that the information on the original birth certificate may not be disclosed.

(5) If the department certifies to the department of health and environmental sciences that the department was not able, within 6 months, to notify a birth parent identified on the original birth certificate, the information may be disclosed as follows:

(a) If the person was adopted prior to October 1, 1989, he may petition the appropriate court for disclosure of the original birth certificate and the court shall order the certificate to be disclosed if, after consideration of the interests of all known persons involved, the court determines that the merits of disclosure clearly exceed the demand of individual privacy.

(b) If the person was adopted on or after October 1, 1989, the department of health and environmental sciences shall release the requested information to the adopted person.

(6) If, within 6 months, the department certifies to the department of health and environmental sciences the notification of each birth parent identified on the original birth certificate pursuant to subsection (3), the department of health and environmental sciences shall disclose the information requested by the adopted person 121 days after the date of the latest notice to either parent. This disclosure will occur if neither birth parent identified on the original birth certificate has filed, at any time during the 120 days, an affidavit with the department of health and environmental sciences stating that the information may not be disclosed.

(7) Notwithstanding the provisions of subsections (5) and (6), if a birth parent named on the original birth certificate of an adopted person has died, the death is certified to the department of health and environmental sciences, and at any time prior to the death the parent has filed an unrevoked affidavit with the department of health and environmental sciences stating that the information on the original birth certificate may not be disclosed, the adopted person may petition the court of original jurisdiction of the adoption proceeding for disclosure of the original birth certificate. The court shall grant the petition if, after consideration of the interests of all known persons involved, the court determines that the merits of disclosure clearly exceed the demand of individual privacy."

Renumber: subsequent sections.

4. Page 3, line 1.

Following: page 2

Insert: "Section 5. Section 40-8-121, MCA, is amended to read:

"40-8-121. Petition for adoption. (1) A petition for adoption shall be filed in duplicate, verified by the petitioners, and shall specify:

(a) the full names, ages, and place of residence of the petitioners and, if married, the place and date of the marriage;

(b) when the petitioners acquired or intend to acquire custody of the child and from what person or agency;

(c) the date and place of birth of child, if known;

(d) the name used for the child in the proceeding and, if a change in name is desired, the new name;

(e) that it is the desire of the petitioners that the relationship of parent and child be established between them and the child;

(f) a full description and statement of value of all property owned or possessed by the child;

(g) facts, if any, which excuse consent on the part of a parent to the adoption; and

(h) that the birth parents named on the original birth certificate have been informed of their rights to file with the department of health and environmental sciences either a consent to disclosure or an affidavit of nondisclosure of information on

the original birth certificate under [section 1].

(2) One copy of the petition shall be retained by the court. The other shall be sent to the department of family services or to the child placing agency participating in the adoption proceeding.

(3) Any written consent required by this part may be attached to the petition or may be filed after the filing of the petition, with the consent of the court.

(4) Except as provided in 40-8-109, a petition for adoption must be filed within 1 year of the time the child was placed for adoption with the petitioner."

Renumber: subsequent sections

5. Page 1, line 13.

Strike: "50-15-304"

Insert: "[section 1]"

6. Page 2, line 6.

Strike: "50-15-304"

Insert: "[section 1]"

7. Page 2, line 25.

Strike: "50-15-304"

Insert: "[section 1]"

8. Page 3, line 1.

Strike: section 4 in its entirety

Renumber: subsequent sections

9. Page 3, line 25.

Strike: "50-15-304"

Insert: "[section 1]"

10. Page 4, line 12.

Strike: "50-15-304"

Insert: "[section 1]"

11. Page 6, lines 5 and 6.

Following: "(a)" on line 5

Strike: the remainder of line 5 through "file," on line 6

Strike: "50-15-304"

Insert: "[section 1]"

12. Page 7, line 8.

Strike: "50-15-304"

Insert: "[section 1]"

13. Page 8, lines 21 and 22.

Following: "only" on line 21

Strike: the remainder of line 21 through "or" on line 22

Following: "court"

Insert: "or as provided in [section 1]"

14. Page 9, line 6.

Strike: "50-15-304"

Insert: "[section 1]"

15. Page 9, line 22.

Strike: "50-15-304"

Insert: "[section 1]"

16. Page 10, line 18.

Following: line 17

Insert: "NEW SECTION. Section ¹³~~14~~. Codification instruction.
[Section 1] is intended to be codified as an integral part of
Title 40, chapter 8, part 1, and the provisions of Title 40,
chapter 8, part 1, apply to [section 1]."

Amendments to Senate Bill No. 103
First Reading Copy (White)

Requested by
For the Committee on Judiciary

Prepared by Valencia Lane
January 20, 1989

- ✓ 1. Title, line 7.
Following: "FROM"
Insert: "AN ATTEMPT TO COMMIT OR THE COMMISSION OF"

- ✓ 2. Page 1, line 13.
Following: "from"
Insert: "an attempt to commit or the commission of"

*Proposed
1-26 JLN*

Amendments to Senate Bill No. 107
First Reading Copy (White)

Requested by Senator Yellowtail
For the Committee on Judiciary

Prepared by Valencia Lane
January 20, 1989

1. Page 2, lines 4 through 9.

Following: "taken." on line 4

Strike: the remainder of lines 4 through 9 in their entirety

Insert: "The board may recommend that clemency be granted or denied. The governor may not be bound by any recommendation of the board, but he shall review the record of the hearing and the board's recommendation, before he grants or denies clemency."

SENATE JUDICIARY

EXHIBIT NO. 8

DATE 1-20-89

BILL NO. SB 122

Amendments to Senate Bill No. 122
First Reading Copy (White)

Requested by Senator Mazurek
For the Committee on Judiciary

Prepared by Valencia Lane
January 20, 1989

1. Page 3, line 7.
Following: "to"
Strike: "causes of action arising"
Insert: "offenses occurring"



Taylor - Did not testify

*SB 102
1/20/89*

2401 West Broadway • Missoula, Montana • (406) 721-3838

January 19, 1989

Gentlemen,

Why do we want to treat a small business operation in Montana like a Chicago corporate rental company?

Why do the major corporate rental companies not have operations in Montana ?

The answer is simple:

1. Low volume-Resulting in low profits
2. Cars driven twice the national mileage average
3. Tourist orientated customers results in doubling of inventory in Summer and disposing of them in the Winter -all very COSTLY
4. One major rental car company has more cars in a large city then all the rental cars in Montana combined

Why should a renter not be responsible for damage inflicted on a rental unit the same as on his own car ? We accept his own insurance coverage where applicable as well as credit card coverage or the option of purchasing C.D.W. Persons purchasing C.D.W. usually have no other coverage. Why should they not be responsible for their own costs ?

If C.D.W. is eliminated, the Montana rental industry has only one recourse, raising rates for everyone. This is unfair for the person who has insurance coverage or credit card coverage.

In short, there is no free lunch.

Joe M. Taylor
Joe M. Taylor

Rent A Wreck of Missoula

Richard R. Hoover

NAME: Richard R. Hoover DATE: 1/20/84

ADDRESS: 1851 Carolina Butte, Mt.

PHONE: Business 723-6107 Home 782-9350

REPRESENTING WHOM? Rent-A-Wreck of Butte

APPEARING ON WHICH PROPOSAL: SB # 102

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

COMMENTS: It appears that this bill would lead to an additional financial burden being placed upon the renters of automobiles in Montana.

Of further concern is the fact that we, the local Montana rental companies, are in competition w/ neighboring states rental companies + would be placed @ a disadvantage in capturing the tourist rental business due to having to increase rates.

Further we would have absolutely no protection under this bill

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

*did not testify SB102
1/20/89*

WITNESS STATEMENT

NAME GERALD B WOODHILL BILL NO. 102

ADDRESS 4224 LINCOLN RD. MISSOULA MT DATE 1/20/89

WHOM DO YOU REPRESENT? HERTZ - MISSOULA MT

SUPPORT _____ OPPOSE AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: SEE ATTACHED SHEET

SB 102
1/20/89

I am Gerald B. Woodahl, President and owner of Western Rentals Inc., a Hertz Car Rental Licensee in Missoula, Montana.

I would like to express my concern and opposition towards Senate Bill 102. It would be very detrimental to our business for the following reasons:

1. When we rent a \$10,000-\$20,000 vehicle to a customer, we assume he will return the vehicle to us in the same condition as he rented it. Unless he returns the vehicle in the same condition, he is now responsible for any loss or damage regardless of fault. We cannot afford to let a customer rent a vehicle and not be held responsible for the damage whether it arises from a collision or driving on an abandoned logging road ruining the tires and tearing up the drive train.

2. Senate Bill 102, would prevent us from selling a waiver to our customers, relieving him of responsibility for damage to the vehicle except in certain specific situations. The waiver is now sold, primarily to customers who do not have appropriate insurance coverage on their business or personal automobile policy, or are not covered by a credit card for damage. For the customer who wants to have protection from being held responsible for damage, they should be able to purchase a waiver.

3. If Senate Bill 102, becomes a law, we would have to have at least a 20% increase in our overall rates to offset the increase in damage we would incur and loss of income from the sale of the waiver. This rate increase would penalize the customers who do not need to purchase the waiver. Almost 50% of our business, is corporate contract rate business in which the rate is negotiated by Hertz Corporation and cannot be adjusted at the local level. It would be impossible under these circumstances to remain a profitable business.

In summary I would like to emphasize that we are a small Montana owned business generating \$600,000 in revenue primarily from out of state businessmen and tourists, traveling in Montana. In 1988, we paid \$20,000 in vehicle license fees and \$60,000 in airport commission fees to Missoula County, along with corporate and individual income taxes to the State of Montana. I would like the legislature to enact legislation to make it more conducive for small businesses to grow and expand in Montana. Senate Bill 102 will do just the opposite by controlling and restricting our industry. The bill would have a devastating financial effect on my business and all the other daily car rental companies operating in Montana.

Thank you for your time and attention.

Gerald B. Woodahl

DATE

Jan. 20, 1989

COMMITTEE ON

Judiciary

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppos
Steve Turkiewicz	Mt. Auto Dealers	102		✓
Jim Oppedahl	MT Supreme Court	116	✓	
Emma E Taylor	auto rental	102		✓
Ernest E Clark	AI Rent A Car	102		✓
Gerald Woodell	HERTZ	102		✓
STEVE COSTLEY	HERTZ	102		✓
Bob Doyle	Avia	102		✓
HAROLD MAERUDERZ	Payless Car Rental	102		✓
Joe M. Taylor	RENT A WRECK	102		✓
John Wigen	AVIS Billings	102		✓
DAVE KELPHEIMER	Avia - Butte	102		✓
MARTY STRIZNIK	HERTZ - BUTTE	102		✓
LARRY AKEY	auto rental operators	102		✓
Mike Grimes	MADA	102		✓
Robert DEMARCO'S	Budget Rent A Car	102		✓
Richard R. Haver	Rent-A-Wreck of Butte	102		✓
Ed Hoadley	Rent-A-Wreck Bozeman	102		✓
Laurie Shadon	Bozeman Chamber	102		✓
Clarice Wallin	Bozeman Food	102		✓
Jacqueline Terrell	American Ins. Assoc.	102	✓	
Larry Tobiasson	AAA Montana	102		✓
Peter Funk	Dept of Justice + ^{MT County} Attorneys	102		✓
Gene Phillips	Nat'l Assoc. of Independent Insurers	102	✓	
Kathy Jirgoin	State Auditor's Office	102	✓	
Bob Byser	Montana Credit Unions League	112	✓	

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date Jan. 20, 1989 Senate Bill No. 103 Time 1

NAME	YES	NO
SEN. BISHOP	✓	
SEN. BECK		✓
SEN. BROWN	✓	
SEN. HALLIGAN	✓	
SEN. HARP	✓	
SEN. JENKINS	✓	
SEN. MAZUREK		✓
SEN. PINSONEAULT	✓	
SEN. YELLOWTAIL	✓	
SEN. CRIPPEN		✓
	7	3

Rosemary Jacoby
Secretary

Sen. Bruce Crippen
Chairman

Motion: Do Pass As Amended
(Sen. Brown)

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 1-20-89 Senate Bill No. 108 Time 2

NAME	YES	NO
SEN. BISHOP	✓	
SEN. BECK		✓
SEN. BROWN	✓	
SEN. HALLIGAN	✓	
SEN. HARP	✓	
SEN. JENKINS	✓	
SEN. MAZUREK	✓	
SEN. PINSONEAULT	✓	
SEN. YELLOWTAIL	✓	
SEN. CRIPPEN		✓

8 2

Rosemary Jacoby
Secretary

Sen. Bruce Crippen
Chairman

Motion: Do Pass - Pinsonneault

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 1-20-89 Senate Bill No. 135 Time 3

NAME	YES	NO
SEN. BISHOP	✓	
SEN. BECK	✓	
SEN. BROWN	✓	
SEN. HALLIGAN	✓	
SEN. HARP	✓	
SEN. JENKINS	✓	
SEN. MAZUREK		✓
SEN. PINSONEAULT	✓	
SEN. YELLOWTAIL	✓	
SEN. CRIPPEN		✓

8 2

Rosemary Jacoby
Secretary

Sen. Bruce Crippen
Chairman

Motion: Do Pass - Halligan

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 1-20-89 Senate Bill No. 122 Time 4

NAME	YES	NO
SEN. BISHOP		
SEN. BECK		
SEN. BROWN		
SEN. HALLIGAN		
SEN. HARP		
SEN. JENKINS		
SEN. MAZUREK		
SEN. PINSONEAULT		
SEN. YELLOWTAIL		
SEN. CRIPPEN		

UNAN.

Rosemary Jacoby
Secretary

Sen. Bruce Crippen
Chairman

Motion: Harp Moved Amend. (Mazurek's
" " D P A - UNAN.