

MINUTES

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

Call to Order: By Chairman Thayer, on January 24, 1989, at  
10:00 a.m.

ROLL CALL

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

Members Excused: None

Members Absent: None

Staff Present: Mary McCue, Legislative Council

Announcements/Discussion: None

HEARING ON HOUSE BILL 36

Presentation and Opening Statement by Sponsor:

Representative Ted Schye, House District 18, stated HB 36 was a straight forward bill presented to him by the Lions Club at Glasgow. He said the bill dealt with sports pools. He said that under current law, all proceeds had to go back to the public, in prizes. He state clubs across the State had been using sports pools to finance community projects such as soft ball complexes, and this bill would legalize these projects for non-profit and charitable organizations.

List of Testifying Proponents and What Group They Represent:

Lyle Nagel - Montana State Volunteer Fire Fighters  
Association.

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Mr. Nagel stated, many voluntary fire departments around the state were not funded by taxes, and they

operated on donations and various fund raisers, including sports pools. He said they supported the bill, so the organizations could generate funds legally. (See Exhibit #1)

Questions From Committee Members: Senator Williams asked if HB 36 had any opposition in the House?

Representative Schye stated their had been none, and the bill was put the consent calendar, and went to third reading.

Senator Weeding asked if the nature of the pools was related to gambling Indian Reservations had?

Representative Schye stated bingo was entirely different, and HB 36 had nothing to do with the reservation bill.

Representative Schye told Senator Lynch HB 36 dealt with non-profit only.

Closing by Sponsor: Representative Schye closed.

#### DISPOSITION OF HOUSE BILL 36

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Lynch moved HB 36 BE CONCURRED IN. Senator McLane seconded the motion. The motion Carried Unanimously. Senator McLane carried the bill on the Senate floor.

#### DISPOSITION OF SENATE BILL 150

Discussion: Chairman Thayer said SB 150 had been referred out of committee, and was scheduled for second reading. He stated he had made a motion to have the bill brought back to committee, and asked Mary McCue to explain the problems that had arisen.

Mary McCue said the committee had made the amendments recommended by the attorney from the Department of Commerce. She stated that after the bill was reported out, she had received a weekend phone call, which requested further changes in the language. She said the attorney had told her they had been interpreting the exemption to apply only to a special power of attorney, and it must be amended to apply to any kind

of power of attorney. She said she had prepared the amendment, and typed the section, as it would read, with all of the amendments from before, and the one requested now. (See Exhibit #2).

Amendments and Vote: Senator Lynch moved the amendment. Senator Noble seconded the motion. The motion Carried Unanimously.

Recommendations and Votes: Senator Noble made a motion SB 150 DO PASS AS AMENDED. Senator Lynch seconded the motion. The motion Carried Unanimously.

HEARING ON SENATE BILL 191

Presentation and Opening Statement by Sponsor: Senator Jacobson, Senate District 36, stated SB 191 added requirements for businesses recording their business names with the Secretary of State. She said the bill would require new businesses to record their assumed business name with the Secretary of State before they began doing business. She said the reason for the bill was to identify the person or entity who was behind the assumed name so, creditors could determine responsibility for debts. Secondly, the registration would protect established businesses from new businesses using the same name. She explained that under the existing law, the office of the Secretary of State didn't have the authority to deny a license to business using someone else's names. She said SB 191 could avoid confusion and potential litigation down the road. She stated there could be some fiscal impact, because some businesses now operating, without a license, might register and generate more revenue for the state. (See Exhibit #3).

List of Testifying Proponents:

Garth Jacobson - Office of the Secretary of State.

List of Testifying Opponents: None

Testimony: Mr. Jacobson said their office was testifying in support of SB 191, because it strengthened the requirements for businesses filing their assumed business name. He stated the bill primarily applied to sole proprietorships and partnerships, because

corporations normally operated under their corporate name. He stated the registration fee was is \$15, and must be renewed every five years. He said SB 191 was good government, made sense, and he urged their approval. (See Exhibit #4).

Questions From Committee Members: Senator Lynch asked if he would be in violation of any laws if he had all his business licenses and went into business without paying \$15 to record his business name?

Mr. Jacobson stated that without registering your business name, someone else could register that same business name and tell you to change your name. He said that a business could not file an action in court, under that assumed business name, if the name had not been registered.

Mr. Jacobson told Senator Hager SB 191 wouldn't affect corporations unless they operated under an assumed name.

Chairman Thayer asked if SB 191 would prevent civil suits over someone using a business name registered to another party in the future?

Mr. Jacobson stated it would in part, because under the proposed legislation, they wouldn't be issued a business license if their assumed business name was already registered.

Chairman Thayer asked if the Secretary of State's Office checked corporate names as well as assumed business names?

Florence Armagost, Bureau Chief, said the list of licensed names was alphabetical, and all would be checked. She stated the main difficulty was to pick out closely named similarities, however duplicates or deceptive similarities were identifiable.

Chairman Thayer stated he was surprised to find the Secretary of State's Office had no authority to make someone change their name, if they were using a recorded business name. He asked if anyone knew why the law hadn't been changed long ago?

Mrs. Armagost said she couldn't answer that question, but this did happen rather often.

Ms. Armagost told Senator Meyer that generally the name check was done upon receipt and was issued the next day.

Senator Meyer asked if a business applying on the city level would have to apply at the Secretary of State's Office, or if the city would have to check before issuance?

Mr. Jacobson stated an applicant would have to have a copy of the name issuance, from the Secretary of State, before the city could issue a city license.

Senator Boylan stated, we already have professional and occupational licensing, he thought this would be a duplicate licensing requirement. He said they were to simplify requirements for the business climate in Montana, and this bill would provide additional requirements and fees.

Ms. Armagost stated the required licensing of the Department of Commerce was different, and the registration with the Secretary of State wasn't new. She said they had always required business name licensing, but the bill would add teeth to the requirement.

Senator Meyer asked if the Secretary of State's Office would make a business change their name or stop doing business, if they were found using the registered name of another business?

Ms. Armagost said they had no statutory authority to order a cease to desist, but the name wouldn't be re-recorded upon application for renewal. She said that if they could provide proof of doing business prior to the name registration, the first use would prevail.

Chairman Thayer asked if there had been any thought to putting in some kind of penalty, so the Secretary of State's Office had some course of action and authority?

Mr. Jacobson said that in order to accomplish what you are suggesting, we would have to investigate complaints, expend money for prosecution, and probably hire more help. He said they had hoped to eliminate businesses, not registering their business name, from obtaining a business license. He stated they had not intended to become directly involved with the action against violators, and increase their work load or budget.

Closing By Sponsor: Senator Jacobson closed.

DISPOSITION OF SENATE BILL 191

Discussion: None.

Amendments and Vote: None

Recommendations and Votes: Senator Weeding made a motion SB 191 Do Pass.

Senator Boylan made a substitute motion to Do Not Pass.  
Senator Hager seconded the motion.

Senator Boylan said the thought this was just another burden on business in Montana, and the needed protection offered was offset by the additional requirements.

Senator Hager said he thought the bill would require extra work for city government to check the procedure.

Senator Lynch said the applicant simply had to register with the Secretary of State, and take proof to the city. He said he thought the bill provided business protection rather than any type of harassment.

Senator Noble said he thought a \$15 fee to record business names, without any authority to take action was unnecessary.

Senator Weeding said he thought it was necessary protection for business, and would prevent problems and litigations.

Senator Thayer said he thought eighty to ninety percent of businesses were already checking registered names before obtaining a business license. He said he felt the problem was, the bill still would not prevent illegal operation, or grant the Secretary of State's Office authority to order a cease and desist.

The question was called for on Senator Boylan's substitute motion to Do Not Pass. The motion Failed, with Senator Williams, Senator McLane, Senator Weeding, Senator Lynch, and Senator Thayer voting no.

Senator Weeding made a motion SB 191 BE CONCURRED IN.  
Senator Hager seconded the motion. The motion Carried.

DISPOSITION ON SENATE BILL 151

Discussion: Senator Lynch stated the intent was to have the board supervise exams, and that language needs amended.

Amendments and Votes: Senator Lynch made a motion to amend the language on Page 7, line 8, by striking "conducted" and inserting, "supervised". Mary McCue stated the same language was involved on Page 6, line 24. (See Exhibit 5). Senator Lynch stated his motion to amend would grant Mary McCue the discretion to make the necessary language changes. Senator Noble seconded the motion. The motion Carried Unanimously.

Recommendations and Votes: Senator Lynch expressed his concern for the electrologists. He said, he agreed they should be regulated by the Medical Board, and questioned the status of the House Bill addressing the issue. He stated he was reluctant to eliminate licensed electrologists from Senate Bill 151, without knowing the Medical Examiners were going to accept them.

Senator Boylan said he was doubtful the Medical Board would accept the electrologists.

Senator Noble suggested the committee hold the bill until the electrology problem was solved.

Senator Lynch agreed, and the rest of the committee said they preferred to hold the bill also. No action was taken on the bill.

#### HEARING ON HOUSE BILL 19

Presentation and Opening Statement by Sponsor:

Representative Swysgood said the intent of House Bill 19 was to eliminate the requirement that bank directors be stockholders. He said that since 1927, section 32-2-324 has required bank directors to own \$1,000 par value of the banks stock. He said that in many cases, par value is not the same as market value of the stock. He said they had considered changing the law requirement to market value, but some community don't have a market value, and the law would be unenforceable. He said HB 19 repealed the requirement for owing stock to serve on a bank board. (See Exhibits #6 and #7).

List of Testifying Proponents:

Bill Leary - Montana Bankers Association

List of Testifying Opponents:

None

Testimony: Mr. Leary said they supported HB 19 because it would enable a local bank, regardless of whether it was a state charter or a national charter, to select the best people to serve on the board, regardless of that person's financial ability. He said ownership of stock in their own right, as present law required, was prohibitive for board director selection. He stated the best board members weren't always available, with this requirement. He said the bill allowed the bank some flexibility in board selection, but still required two thirds of the board to be residents of the State of Montana.

Questions From Committee Members: Senator Williams asked what determined par value, and if it was uniform from bank to bank?

Mr. Leary said par value varied from bank to bank, and he would refer the other part of the question to Bruce Ellis.

Bruce Ellis of the Montana Bank System said par value was normally set when the stock is originally issued. He said that if par value was set at \$10 per share, the subscriber would have to pay \$20 a share. He said the bank's capital account then consisted of the \$10 from each common share in stock plus another \$10 from paid in surplus. He said that as time passed, and the capital account grew, that stated value may be raised.

Representative Swysgood told Senator McLane, board members in other businesses weren't required to be shareholders. He stated this law only pertained to banking.

Closing by Sponsor: Representative Swysgood stated testimony in the House of Representatives had revealed there were some technical violations of the current statute, so HB 19 would allow those banks to become aligned with the law.

## DISPOSITION OF HOUSE BILL 19

Discussion: Mary McCue said the title had a grammatical error in the title. She stated the bill had two



requirements originally, and when it was amended the title had not been changed to indicate the singular requirement.

Amendments and Votes: Senator Meyer made a motion to amend Senator McLane seconded the motion. The motion Carried Unanimously.

Recommendations and Votes: Senator Meyer made a motion HB 19 BE CONCURRED IN AS AMENDED. Senator Williams seconded the motion. The motion Carried, with Senator Hager opposing the motion. Senator Meyer carried HB 19 on the floor of the Senate.

#### DISPOSITION OF SENATE BILL 179

Discussion: Senator Lynch told Senator Williams the equivalency exam wasn't really that difficult, because the GED exam was readily available, inexpensive, and had a rather low requirement for passing, with a re-testing availability.

Senator Weeding expressed concern as to whether a GED should be a necessity, or that it would make the student a better cosmetologist?

Amendments and votes: Senator Lynch made a motion SB 179 DO PASS. Senator McLane seconded the motion.

Senator Thayer expressed a concern for the social and economic repercussions of possibly closing off one more avenue of employment, rather than carry out the intent of encouraging a better education. He said he had a divided personal concern for the affect.

Senator Weeding asked Senator Lynch if certain reading disabilities would affect the ability to earn a GED? He asked if it wasn't possible for an individual to learn a trade, such as mechanic, or carpenter?

Senator Lynch said he wasn't aware of any reading disability that could not be worked with.

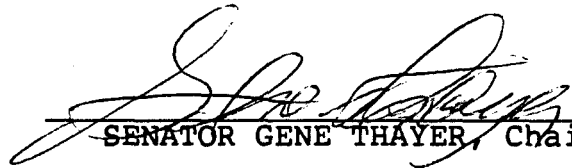
Senator Williams stated that in 1987, the percentage of Montana students graduating from high school was 83%. He said he was concerned what became of the other 17%? He asked what percentage of the 17% actually acquire their GED?

Senator Lynch said he thought it was extremely high.\_

The Question was called for on the motion to DO PASS.  
The motion Carried, with Senator Boylan, Senator  
Williams, Senator Hager, and Senator Weeding voting no.

ADJOURNMENT

Adjournment At: 11:42

  
\_\_\_\_\_  
SENATOR GENE THAYER, Chairman

GT/ct

ROLL CALL

BUSINESS & INDUSTRY COMMITTEE

DATE 1/24/89

51st LEGISLATIVE SESSION 1989

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

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

January 24, 1989

MR. PRESIDENT:

We, your committee on Business and Industry, having had under consideration HB 36 (third reading copy -- blue), respectfully report that HB 36 be concurred in.

Sponsor: Schye (McLane)

BE CONCURRED IN

Signed: \_\_\_\_\_  
Gene Thayer, Chairman

*J.C.*  
*11/24/89*  
*2:30 P.M.*

SENATE STANDING COMMITTEE REPORT

January 24, 1989

MR. PRESIDENT:

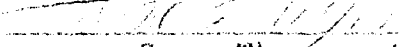
We, your committee on Business and Industry, having had under consideration SB 150 (first reading copy -- white), respectfully report that SB 150 be amended and as so amended do pass.

1. Page 2, lines 14 and 15.

Following: "authorizing the"

Strike: "final consummation of any contract for the"

AND AS AMENDED DO PASS

Signed:   
Gene Thayer, Chairman

SB 150-126

1-25-89  
18  
2:00

SENATE STANDING COMMITTEE REPORT

January 24, 1989

MR. PRESIDENT:

We, your committee on Business and Industry, having had under consideration HB 19 (third reading copy -- blue), respectfully report that HB 19 be amended and as so amended be concurred in:

Sponsor: Swysgood (Meyer)

1. Title, line 5.  
Strike: "REQUIREMENTS"  
Insert: "REQUIREMENT"

AND AS AMENDED BE CONCURRED IN

Signed: \_\_\_\_\_  
Gene Thayer, Chairman

*y/c.  
1/24/89  
2:28 p.m.*

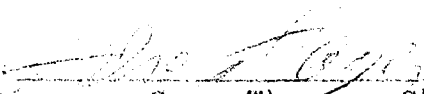
SENATE STANDING COMMITTEE REPORT

January 24, 1989

MR. PRESIDENT:

We, your committee on Business and Industry, having had under consideration SB 179 (first reading copy -- white), respectfully report that SB 179 do pass.

DO PASS

Signed: 

Gene Thayer, Chairman

SCRSB179.124

1-25-89  
3:00  
JY

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

EXHIBIT NO. 1  
1/24/89

BILL NO. HB 36

DATE: 1-24-89

NAME: Kyle Nagel

ADDRESS: Box 93 205 N. Main Simms Mt. 59477

PHONE: 264 5850

REPRESENTING WHOM? Mt. St. Vol. Firefighters Assn. Inc.

APPEARING ON WHICH PROPOSAL: HB 36

DO YOU: SUPPORT?  AMEND?  OPPOSE?

COMMENT: Our assn. would like to be put on record  
as supporting HB.36. Many of the vol. depts. as well  
as emergency medical quick response unit and other  
vol. services need to raise their own funds to operate.  
Sports pools are used by some of these services now  
probably illegally and this would give them another legal  
source of income

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.



Amendments to Senate Bill No. 150  
First Reading Copy  
Requested by Department of Commerce  
For the Committee on Business & Industry

Prepared by Prepared by Mary McCue  
January 23, 1989

1. Page 2, lines 14 and 15.  
Following: "authorizing the"  
Strike: "final consummation of any contract for the"

THE EXEMPTION FOR A PERSON ACTING AS ATTORNEY-IN FACT WOULD NOW  
READ:

37-51-103. Exemptions. ... The provisions of this chapter,  
however, shall not: ...

(2) apply to any person acting as attorney-in-fact under a  
duly executed special or general power of attorney from the owner  
of any real estate authorizing the purchase, sale, exchange,  
renting, or leasing of any real estate, unless the person acting  
as attorney-in-fact does so regularly or consistently for a  
person or persons, for or with the expectation of receiving a  
fee, commission, or other valuable consideration in conjunction  
with a business, or for the purpose of avoiding licensing  
requirements;

## Testimony on SB 191

Mr. Chairman and members of the Senate Business and Industry committee, for the record I am Senator Judy Jacobson, District 36 from Butte, Montana. I come before you today as sponsor of SB 191.

SB 191 is a bill that puts more teeth into the requirement that a businesses register their assumed business names prior to operating. SB 191 would preclude a entity from receiving a license to operate unless it has registered its assumed business name with the Secretary of State. This would include business licenses issued at both the local an state levels.

For the purpose of background, an assumed business name must be registered with the Secretary of State's office. The reasons for registering an assumed business name are as follows. First, by identifying who is the person or entity behind an assumed business name it is possible for creditors to identify who is responsible for the debts of a business. This prevents creditors from being defrauded. Second By registering an assumed business name, a business can protect itself from other people using that name and stealing the goodwill that name carries with it.

A problem arises when licensing entities grant a license to a business without checking to see if other business are using the same name. They do not have the authority to deny a license to business because it is using someone else's name. This then leads to confusion and anger over the process.

If a business registers its assumed business name before it receives a business license then the problems associated with confusion of names can be prevented. A business will not mistakenly or intentionally take the name of another business. It will not assume that because it is licensed it is operating properly. This requirement at the beginning of the licensing process can prevent confusion and potential litigation or embarrassment down the road.

This bill will have some positive fiscal impact. There may be some businsses operating without registered business names that will come forward and be registered. This may result in a little additional revenue for the state.

SB 191 will help ensure business are operating properly. It will not be an extra burden on a business because registering their assumed business name is already required. It will only help prevent problems from occurring down the road.

With that I urge your support of SB 191 and request you give it a due pass recommendation.

WITNESS STATEMENT

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 4

DATE: 1/24/89  
BILL NO. SB 191

NAME: Gerth Jacobson

ADDRESS: Sec. of State's Office

PHONE: 444-5375

REPRESENTING WHOM? Sec. of State

APPEARING ON WHICH PROPOSAL: SB 191

DO YOU: SUPPORT?  AMEND?  OPPOSE?

COMMENTS: Testimony given to committee secretary  
see Exhibit #4

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SECRETARY OF STATE  
STATE OF MONTANA

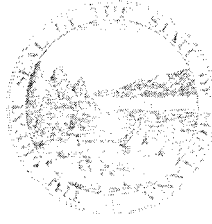
SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 4

DATE 1/24/89

BILL NO. SB 191

Mike Cooney  
Secretary of State



Montana State Capitol  
Helena, Montana 59620

Testimony on Senate Bill 191

Mr. Chairman and members of the Senate Business and Industry Committee, for the record I am Garth Jacobson, representing the Secretary of State's Office.

I am here today to testify in support of SB 191. This bill strengthens the requirement for businesses to file their assumed business names. This is accomplished by requiring that businesses file their assumed business name with the secretary of State's office as a prerequisite to receiving any business license. This will preclude the confusion a business would experience if it received a business license and later learned it needed to register it's assumed business name with the Secretary of State's office. If some other entity already had registered the name then the business would have to go back and change it's name and relicense itself under the new name. It is that kind of hassle that makes businesses angry at the government.

The registration of an assumed business name protects not only the business that registers its name but also its creditors. The business is protected by having exclusive right to use its name. The creditors are protected by knowing who is responsible for the debts of that business. The registration of assumed business names plays an important role in smooth commerce operations in Montana.

The provision requiring the registration of an assumed business name primarily applies to sole proprietorships and partnerships. It usually does not apply to corporations because they normally operate under their corporate name.

At the end of 1988 there were 11,259 active registered assumed business names in the Secretary of State's office. In 1988 the office registered 2,154 new names, renewed 377 names, amended 172 names and filed 145 voluntary cancellations of names. The office charges a \$15 fee for registering an assumed business name. The registration must be renewed every five years.

SB 191 makes for better government, it makes sense and I urge your approval of this legislation

Amendments to Senate Bill No. 151  
First Reading Copy

For the Committee on Business & Industry

Prepared by Mary McCue  
January 24, 1989

1. Page 6, line 24.  
Strike: "and given"

2. Page 7, line 8.  
Strike: "conducted"  
Insert: "supervised"

HOUSE BILL #19

Representative Charles Swysgood

January 16, 1989

The intent of House Bill #19 is to eliminate an archaic law which imposes limiting restrictions on banks in today's unregulated, competitive environment. As amended it repeals the qualifying stock requirement for bank directors, but retains the two-thirds residency requirement for a bank's board.

Since 1927, Section 32-1-324 has required all individuals own \$1,000 par value of the bank's stock in order to serve on the board. In many cases, banks like First Interstate will only have a par value of a dollar per share, but a market value of \$23 a share thereby requiring the individual to purchase \$23,000 in First Interstate stock before he can serve as a director.

We could change the law to market value but community bank stock does not have a market value. Then the law would be impossible to appraise and enforce.

In addition the qualifying stock law prevents a bank from placing a low-income or consumer advocate on the board. A bank may want a diversified board to represent all special interests in the community, but is restricted by this law. Repeal of this law would allow the bank to be more responsive to the market.

Also, most state banks use a buy-back agreement with their directors wherein they guarantee to buy back the stock when the director leaves the board. According to section 32-1-324 every director must own the stock in his own right and not pledge it as security for any loan and debt. Technically most state banks are violating this law today, so therefore we must repeal this law.

Montana law, Section 35-1-401, does not require directors for other corporations to be share holders. This is also true with competing financial providers like credit unions, savings and loans, stock brokers, retailers, etc. Therefore, this law should be repealed.

Bankers, the Montana Bankers Association, and the Commissioner of Financial Institutions agree it is an archaic law and no one knows why it was required in the first place. Perhaps someone thought years ago a bank director should have qualifying shares of stock to enhance his interest in the bank. Today, however, bank directors are subject to a host of laws with stiff fines and long imprisonment in addition to personal liability for their actions. Directors' duties are imposed by bank and bank holding company statutory law, common law, securities law, criminal law, and antitrust law. The directors are not mere ornaments of the bank to lure public confidence. When they become directors, the law casts upon them the important duties of supervision and direction, which they can not delegate to the officers; and therefore the stockholders and depositors have the right to intrust the institution with their money, in confidence that the directors will perform these duties. If a court finds that a director had a duty to a particular person, did not fulfill that duty and that the person to whom this duty was owed was damaged, then the court will hold the director liable to that person. In such a case, the directors personal assets are at risk.

This archaic law simply discriminates against state banks, and is a useless nuisance that causes additional administrative headaches and costs which are ultimately passed on to the consumer.

I urge you to approve HB-19.

## EXCERPTS FROM

"RESPONSIBILITIES AND LIABILITIES OF BANK  
AND BANK HOLDING COMPANY DIRECTORS"

By Robert E. Barnett

Section 110. Directors' duties are imposed by bank and bank holding company statutory law, common law, securities law, criminal law, and antitrust law. Bank and bank holding company directors are liable for damages caused when they breach a duty to those for whom the duty was intended as a protection. Similarly they may be criminally liable to the state or federal government for violations of criminal law.

Section 113. Even the most conscientious director may be sued for acts or omissions that in the long run may prove lawful, legitimate, and defensible.

Section 126. If a national bank director knowingly violates or knowingly permits or assents to the violations of any of the provisions of the national banking laws, and if the bank is dissolved, he shall be personally liable in his personal and individual capacity for all damages suffered by the bank, its shareholders, or any other person.

Section 130. Not only the bank but any officer, director, employee, agent, or other person participating in the conduct of the affairs of the bank, may be liable for that civil penalty.

Section 157. Civil money penalties can now be imposed against banks or bank holding companies themselves or against an individual officer, director, employee, agent or other person participating in the conduct of the affairs of the institution who violates Sections 22 and 23A of the federal reserve act... provisions. Penalties range from \$100 a day for interest violations to \$1,000 a day for violations of a final cease and desist order.

Section 158. Lawsuits are filed against directors in about two of every three bank failures.

Antitrust

Section 160. Specific penalties under law can be severe, running as high as \$100,000 for a director (\$ 1,000,000 for a corporation) or up to three years in prison. Civil liability exists as a result of violations of the criminal provisions, and damages can be very high in such suits.

Section 163. Directors are liable for fines and imprisonment for violations of applicable criminal law. The penalties vary depending on the crime, but range up to \$10,000 and five years imprisonment.

(Schendel Associates Community Banking Consultants and Advisors)



EXCERPTS FROM

FOCUS ON THE BANK DIRECTOR

The responsibilities and liabilities of bank directors are imposed by common law, statutory law, securities law, antitrust law, and criminal law. p. 95

Under common law, all corporate directors, including bank directors, bear personal liability to their corporate shareholders for directing and supervising the corporation in the stockholders' best interests. p. 97

If a court finds that a bank director had such a duty to a particular person, did not fulfill that duty, and that the person to whom the duty was owed was damaged as a result of this failure, then the court will hold the director liable to that person. p. 97

The directors were not mere ornaments to the bank to lure public confidence. When they became directors, the law cast upon them the important duties of supervision and direction, which they could not delegate to the officers; and therefore the stockholders and depositors had the right to intrust the institution with their money, in confidence that the directors would perform those duties. When sued for losses which resulted from careless or unlawful acts and unfortunate transactions, they can never set up as a defense that they did not examine the books of the bank, knew nothing about the loans or discounts, were ignorant of banking business, or that they intrusted the management and supervision of the business to the executive officers, in whom they had confidence. The welfare of the public and the interests of banking institutions alike forbid this. p. 98 - 99

Warren vs. Robinson, 57 pac 287 (Utah, 1899)

A director who violates or allows a violation of the law can be sued for damages by anyone harmed by the actions. p. 103

Section 53 provides that if the directors of a national bank knowingly violate or knowingly permit the officers or employees of the bank to violate any of the other provisions of the act, every director who participated in the violation or consented to it shall be liable, personally and individually, for any damages resulting from the violation, whether the damages are to the bank itself, its shareholders or any other particular person. p. 104

Violations of the securities laws can lead to penalties of up to \$5,000 and five years in prison. Civil liability for a bank director also may arise from the violations of the securities laws, if damages can be proved. p. 117

Directors who knowingly or willfully commit a criminal act or omission can be held liable for penalties of up to \$10,000 and five years in prison, depending on the crime. p. 121-122

In addition to criminal penalties, violations of criminal laws may also give rise to civil liabilities. p. 122



ROLL CALL VOTE

SENATE COMMITTEE BUSINESS & INDUSTRY

Date January 24, 1989 Bill No. SB 191 Time 11:21

NAME	SEAT NO.	YES	NO
SENATOR DARRYL MEYER	35	✓	
SENATOR PAUL BOYLAN	50	✓	
SENATOR JERRY NOBLE	34	✓	
SENATOR BOB WILLIAMS	39		✓
SENATOR TOM HAGER	42	✓	
SENATOR HARRY "DOC" MC LANE	33		✓
SENATOR CECIL WEEDING	28		✓
SENATOR JOHN "J.D." LYNCH	5		✓
SENATOR GENE THAYER	23		✓

Carla M. Turk  
Secretary, CARLA TURK

Gene Thayer  
Chairman, GENE THAYER

Motion: Senator Boylan made a substitute motion to Do Not Pass SB 191. Senator Hager seconded the motion.

ROLL CALL VOTE

SENATE COMMITTEE BUSINESS & INDUSTRY

Date January 24, 1989 Bill No. SB 179 Time 11:38

NAME	SEAT NO.	YES	NO
SENATOR DARRYL MEYER	35	✓	
SENATOR PAUL BOYLAN	50		✓
SENATOR JERRY NOBLE	34	✓	
SENATOR BOB WILLIAMS	39		✓
SENATOR TOM HAGER	42		✓
SENATOR HARRY "DOC" MC LANE	33	✓	
SENATOR CECIL WEEDING	28		✓
SENATOR JOHN "J.D." LYNCH	5	✓	
SENATOR GENE THAYER	23	✓	

Carla M. Turk  
Secretary, CARLA TURK

Gene Thayer  
Chairman, GENE THAYER

Motion: Senator Lynch made a motion SB 179  
to Pass. Senator Mc Lane seconded  
the motion.