

MINUTES

MONTANA SENATE  
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bruce Crippen, on February 2, 1989, at 10:00 a.m. in Room 325.

ROLL CALL

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

Members Excused: None

Members Absent: None

Staff Present: Staff Attorney Valencia and Committee Secretary Rosemary Jacoby

Announcements/Discussion: There were none.

HEARING ON SENATE BILL 273

Presentation and Opening Statement by Sponsor: Senator Tom Keating of Billings, representing District #44, said that his bill proposed a referendum for a constitutional change which would permit the governor to remove a member of the board of regents. Last year, he stated, the department of administration was on the carpet for contracted services. They claimed the board of regents had to assume the responsibility for 60% of the cause of the problem, he said. He felt the governor should be able to have some control over what goes on and the board said they weren't accountable to anyone including the governor. They also told the governor he could not demand any resignations. During the interim, Senator Keating said he researched this subject and got the consensus that board members should be responsible and accountable, and that was the reason he sponsored the bill.

List of Testifying Proponents and What Group they Represent:  
None.

List of Testifying Opponents and What Group They Represent:  
Carrol Krause, Commissioner of Higher Education.

Testimony:

Carrol Krause said the bill would have far-reaching consequences. It would allow the governor to abolish the entire board of regents at will, he stated. He said the reason for the strong language in the constitution was so that the board of regents would be isolated from any party or entity. The members are appointed with rotating memberships, and are confirmed by the Senate, according to Mr. Krause. The continuity of the board would be at risk, he commented, and he felt there would be few members who completed a full term. This, he said, would place higher education in a precarious position. He urged that the bill not be passed.

Questions From Committee Members: Senator Mazurek asked Senator Keating if the bill would require a cause for removal and Senator Keating said he had not devised a set of rules. His only wish was to make the board of regents accountable. People appointed by the governor were expected to reflect his philosophy. He assumed the governor would act in a prudent way as he would be accountable to the electorate. Senator Mazurek asked if Senator Keating would be open to amendments to clarify possible problems and Senator Keating answered he would be. He suggested adding "with the advice and consent of the Senate." At present, he stated, a member of the board can't be removed even for cause. Sen. Bishop said the governor tried to remove him from the Fish and Game Commission and wasn't able to do it.

Senator Pinsoneault said some control could be exercised by the budget. Because the board is constitutional, they must still operate according to the law, said Carrol Krause. The board has the ability to set salaries, but they have to do it within appropriations, because the legislature is not bound to fund increases if it chooses not to do it.

Closing by Sponsor: Senator Keating said within a few years there would be a review of the constitution by the people of Montana. But, he said, this segment might be overlooked or minimized and he felt it deserved close scrutiny. He urged the committee to carefully study the bill and thanked them for a fine hearing. He closed the hearing.

#### DISPOSITION OF SENATE BILL 273

Discussion: Senator Mazurek wondered if the bill had come from the governor's office. Senator Crippen commented that no one from that office had attended the hearing. Senator Pinsoneault said he didn't like the board of regents and, personally, would like to abolish them. But, he found some merit in the bill and thought the governor should be able to remove a member for cause. Senator Mazurek thought this would be an act of "spite" and wouldn't accomplish anything. He MOVED that SENATE BILL 273 DO NOT PASS. Senator Brown said he saw problems with the bill, too. Chairman Crippen asked if the committee would like more time on the bill and possibly amending it. It was the consensus to do that. Senator Mazurek WITHDREW his motion.

Amendments and Votes: None.

Recommendation and Vote: It was recommended to take action on the bill at a future meeting.

#### HEARING ON SENATE BILL 266

Presentation and Opening Statement by Sponsor: Senator Mike Walker of Great Falls, representing District 20, said his bill parallels the alcoholic beverage law. The University of Montana Law School drafted the bill for him. Currently, he stated, there were no laws regarding the sale of tobacco products to minors. School teachers, parents, clerks and others had encouraged him to sponsor the bill in an effort to reduce smoking or use of chewing tobacco in young people. He said there is a warning on cigarette packages telling of the health risks. He also stated there are people enough to fill two 747s who die every

day from tobacco caused illnesses. Jerome Anderson who represents the tobacco industry supported the bill, said Sen. Walker, but wasn't able to attend the hearing to testify. In addition, he stated, Tom Maddox, who lobbies for the tobacco industry, also wished to go on record as favoring the bill. Mr. Maddox had asked Sen. Walker to read a statement saying young people should not smoke which he did.

List of Testifying Proponents and What Group they Represent:

Gene Phillips, Smokeless Tobacco Products  
Don Espelin, M.D., Department of Health and  
Environmental Sciences  
Toni Jensen, Rocky Mountain Tobacco-Free Challenge

List of Testifying Opponents and What Group They Represent:

None.

Testimony:

Mr. Gene Phillips stated he opposed the sale of tobacco products to minors. He urged the committee to pass the bill.

Dr. Espelin read written testimony into the record.  
See Exhibit 1.

Toni Jensen read written testimony into the record in favor of the bill. See Exhibit 2.

Questions From Committee Members: Senator Halligan asked where penalties were discussed in the bill. Senator Mazurek said they were on page 2, Section 4. Possession of tobacco products was discussed by members of the committee and Sen. Crippen asked if Sen. Walker wished to make possession illegal. Senator Walker answered yes. Sen. Crippen asked if Sen. Walker would consider sponsoring a bill to abolish smoking in public places and Sen. Walker said yes.

Senator Crippen asked if the bill didn't place additional responsibility on the clerks in stores and Sen. Walker said they already had that responsibility in selling beer, wine and other alcoholic beverages, and that tobacco products were sold in the same type of store. Senator Yellowtail asked how this would affect

the vending machine sale of cigarettes. Sen. Mazurek said they were referred to on page 1, line 24. Senator Pinsoneault asked about the child going to the store with a note from a parent asking for cigarettes to be sold to the child. Senator Walker said the child would not be allowed to buy the cigarettes.

Closing by Sponsor: Senator Walker asked the committee to do whatever possible, including amendments, to pass the bill. He urged support and closed the hearing.

#### DISPOSITION OF SENATE BILL 266

Discussion: The committee had a discussion on including an amendment referring to possession of tobacco products.

Amendments and Votes: Senator Halligan MOVED an amendment on page 1, line 21, after " purchase" to insert "or possession of tobacco products" and to reflect the same in the title as well. The MOTION PASSED UNANIMOUSLY.

Recommendation and Vote: Senator Halligan MOVED that SB 266 DO PASS AS AMENDED. The MOTION CARRIED on a 9 to 1 vote with Senator Crippen dissenting.

#### DISPOSITION OF SENATE BILL 232

Recommendation and Vote: Senator Yellowtail MOVED for a DO PASS on Senate Bill 232. The MOTION PASSED UNANIMOUSLY.

#### DISPOSITION OF SENATE BILL 208

Recommendation and Vote: Senator Brown MOVED that Senate Bill 208 BE TABLED. The MOTION CARRIED UNANIMOUSLY.

#### DISPOSITION OF SENATE BILL 155

Recommendation and Vote: Senator Halligan MOVED that Bill 155 BE TABLED. The MOTION CARRIED by a vote of 8 to 2 with Senators Mazurek and Crippen voting NO.

DISCUSSION ON PENDING BILLS:

## SENATE BILL 138

Senator Brown stated that George Bennett had been unable to attend this meeting but that he had some proposed amendments. The bill, said Senator Brown, was important to all types of loan institutions: banks, savings and loan and credit unions. Utility companies were concerned they might have to put some agreements in writing every month. Also, he stated, people in sales had problems with the bill. Valencia Lane distributed the proposed amendments. See Exhibit 3. Senator Pinsoneault said he couldn't believe a bank ever loaned money without having a written agreement. Senator Brown said that a bank sometimes loaned money to a person. Then, sometime later the person might come in for a visit or see the banker on the street and say things were going well and he might need another loan to expand. The banker might comment that it could probably work out. But, by the time the man came in for a loan, the bank determined that further credit could not be extended. And then, the customer might file suit, claiming that a verbal agreement had been made, said Senator Brown.

Senator Beck said that sometimes there is an assumption of a loan, as might occur when a house loan is made and the builder overspends. He may come back to the loaning institution assuming that more money would be available.

Senator Crippen said he felt the bill would protect the banker and he wondered if the borrower shouldn't also be protected. Senator Beck felt the loaning institutions should always have loan agreements in writing so they wouldn't be liable for law suits on assumed, verbal loans. Senator Crippen said he didn't want to entirely preclude the debtor from suing. But, he thought this bill needed to be tightened up. Senator Mazurek said the bill started out with fraud and also referred to credit agreements. Senator Pinsoneault said he thought the courts had bent over backwards for the debtor. It was the consensus of the committee that no action should be taken until Senator Brown had time to consult with George Bennett.

DISCUSSION ON SENATE BILL 196

Senator Crippen explained to the committee that a correction had been made to properly reflect the committee's wishes on the standing committee report as to the salary raises for the supreme court justices and district court judges. That, he stated, was the reason for the delay in the committee report on the floor of the senate.

DISCUSSION ON SENATE BILL 112

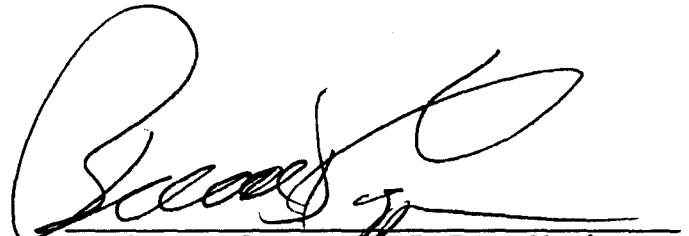
Senator Mazurek's fraud transfer bill was discussed by the committee. Senator Mazurek asked that action on the bill be postponed until a further meeting.

DISCUSSION ON SENATE BILL 241

Senator Mazurek asked that action on SB 241 be withheld until a future date as he didn't want it to appear on the floor of the senate the same day as the bill for judges raises, as SB 241 pertained to judges retirement. The committee concurred.

ADJOURNMENT

Adjournment At: 11:25 a.m.



SENATOR BRUCE D. CRIPPEN, Chairman

BDC/rj

minrj.202

ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date 2-2-89

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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.



SENATE STANDING COMMITTEE REPORT

February 3, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration SB 266 (first reading copy -- white), respectfully report that SB 266 be amended and as so amended do pass:

1. Title, line 6.

Following: "FROM"

Insert: "PURCHASING, POSSESSING, OR"

2. Page 1, line 17.

Following: "prohibited"

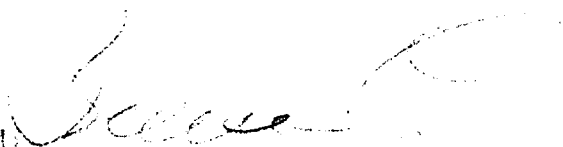
Insert: "-- purchase and possession prohibited"

3. Page 1, line 21.

Following: "purchase"

Insert: "or possess"

AND AS AMENDED DO PASS

Signed: 

Bruce D. Chippen, Chairman

4/10  
2/3/89  
1:30  
P.M.  
SRSB266-203

SENATE STANDING COMMITTEE REPORT

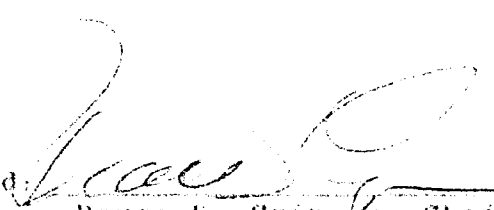
February 2, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration SB 232 (first reading copy -- white), respectfully report that SB 232 do pass.

DO PASS

Signed:

  
Bruce G. Crapp, Chairman

4/10  
2/3/89  
1:30 p.m.

scrib232.202

## WITNESS STATEMENT

NAME DONALD KESPELIN BUDGET \_\_\_\_\_ADDRESS HELENA MTWHOM DO YOU REPRESENT? DHESSUPPORT  OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

COMMENTS: SB 266 is absolutely necessary to reduce the incidence of children starting to smoke.

The Behavioral Risk Survey information shows that our population is quitting smoking at a healthy rate. The exception to this is the kids. They continue to start tobacco use at an alarming rate.

I personally started smoking as a young man - became addicted and now I am completely handicapped.

I've had two bypass surgeries and 9 bypasses. Smoking ruined my life.

Please pass this bill

Donald Kespelein MD

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

## WITNESS STATEMENT

NAME Toni Jensen BUDGET \_\_\_\_\_ADDRESS Helena mtWHOM DO YOU REPRESENT? Rocky Mountain Tobacco Free ChallengeSUPPORT SB 266 OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

COMMENTS: Mr. Chairman and members of this  
committee, I am Toni Jensen, coordinator of the Rocky  
Mountain Tobacco Free Challenge, a Federally Funded Program  
operated by the State Department of Health and Environmental  
Sciences. I am here to speak on behalf of SB 266.

The Rocky Mountain Tobacco Free Challenge is a cooperative effort  
by eight western states to significantly reduce or eliminate  
tobacco use by the year 2000.

In most states it is illegal to sell tobacco products to youth  
But not in Montana. According to the American Academy of  
Pediatrics, 90% of American smokers began the habit before  
they were 20 years old and the average beginning age for smoking  
is 14 years. Safeguarding the health of our youth is one  
of our most significant responsibilities. I hope that you will  
be willing to see that this bill is a <sup>positive</sup> STEP to establish policies  
that specifically prohibit easy access to such substances  
by minors. I believe that it is our responsibility to  
strive for nothing short of total prohibition of smoking  
for those under the age of 18. This would have more  
of a profound impact on <sup>our</sup> state's vital statistics than  
virtually any other conceivable health measure.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

We all know smoking is not appropriate behavior for children; however approximately six million American children and teenagers are in various stages of becoming tobacco addicts. Each day, 4000 young people begin smoking.

In SB 206 we are presented with an opportunity to impact the problem of tobacco use by minors.

A vote in favor of this bill will be a vote in favor of children no longer being exposed to an environment in which our most addictive drug - tobacco - is used.

*Geo. Bennett*  
*Amendments*  
*Ex. Sess.*

SENATE JUDICIARY

EXHIBIT NO. 3

DATE 2-2-89

BILL NO. SB 138

**PROPOSED AMENDMENTS TO SENATE BILL NO. 138**

An act requiring loan and credit agreements to be in writing in order to be enforceable; amending § 28-2-903, MCA; and providing an applicability date.

Amend Senate Bill 138, second reading, page 2, by striking all of the new materials appearing on lines 6 and 7.

Further amend page 2, line 9, striking the new material "and (f)."

Further amend page 2, line 11, by inserting a new subparagraph (3) to read as follows:

(3) A debtor may not maintain an action on a credit agreement unless the agreement is in writing, expresses consideration, and is signed by the creditor and the debtor. As used in this subsection the following terms have the meanings given them:

(a) "Credit Agreement" means an agreement to lend or forbear repayment of money but does not include promissory notes, sales or credit card transactions;

(b) "Creditor" means a person who is engaged primarily in the business of making loans under a credit agreement with a debtor; and

(c) "Debtor" means a person who obtains credit or seeks a credit agreement with a creditor, or who owes money to a creditor, in excess of \$1,000.

Renumber remaining subparagraphs.

DATE

Feb. 2, 1989

COMMITTEE ON

Judiciary

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Donald E. Egan MD	OHE-S	<del>HR</del> SB266	X	
Toni Jensen	Ruck, ML Tobacco Free <sup>Philly</sup>	SB266	X	
Carol Korman	Board of H.S.P	SB273		X
GEVE PHILLIPS	Smokers Tobacco Council	SB266	X	

(Please leave prepared statement with Secretary)

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 2-2-89 Senate Bill No. 266 Time \_\_\_\_\_

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

Do Pass as Amended: 9 . 1

Rosemary Jacoby  
Secretary

Sen. Bruce Crippen  
Chairman

Motion: Senator Halligan: p. 1, line 21, after "purchase",  
Insert: "is possessing of a tobacco product" and  
reflected in the title as well. - Unanimous  
Senator Halligan Do Pass as Amended 9 to 1



ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 2-2-89 Senate Bill No. 155 Time \_\_\_\_\_

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: Halligan Moved to Table - 8 to 2

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