

## MINUTES

### MONTANA SENATE 51st LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bruce Crippen, on February 6, 1989, at 10:00 a.m. in Room 325.

#### 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 and Bill Yellowtail.

Members Excused: None.

Members Absent: None.

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

Announcements/Discussion: There were none.

#### HEARING ON SENATE BILL 322

Presentation and Opening Statement by Sponsor: Senator Fred VanValkenburg of Missoula, representing District 30, opened the hearing saying it was to revise the media confidentiality act by providing that a person who testifies in a lawsuit against a media entity does not waive the journalist privilege. It comes in answer to a supreme court decision in 1986, Sybil vs. Lee Enterprises, Don Schweneson, reporter for the Missoulian in Flathead County. This was a libel case and Judge Keating decided in the favor of the defendants, but it was overturned in appeal, he said. The Montana Supreme Court said that improper jury instructions had been given and Mr. Schweneson had waived the "shield" law by virtue of taking the witness stand in his own defense. Senator VanValkenburg stated there was a clear distinction in an individual voluntarily giving up a privilege and defending himself, where he does not exclusively give up

a privilege. He compared it to a priest giving up the confidentiality of a confessional.

List of Testifying Proponents and What Group they Represent:

Brad Hurd, Editor of the Missoulian  
Gary Moseman, Great Falls Tribune  
Charles Walk, Director, Montana Newspaper Association  
Ian Marquand, KTVH Television Station and President,  
Montana Chapter of Professional Journalists

List of Testifying Opponents and What Group They Represent:

None.

Testimony:

Brad Hurd said there were instances when a journalist must testify or subject himself to default judgement. His group maintains that is not the intent of the law and feel this bill would clarify the intent. He distributed Exhibit 1 to members of the committee entitled "SB 322 - A Bill to Revise the Media Confidentiality Act.

Gary Moseman said he felt this bill would expand the flexibility of news reporters. Much information is gathered with a confidential source and could be of use to others in a civil action, but the reporter is proscribed from testifying because he would be waiving his confidentiality privilege. He urged passage of the bill.

Charles Walk stated he represented the Montana Newspaper Association which included all 11 daily newspapers and 65 weekly newspapers in Montana. He stated he was also representing Mike Voeller of Lee Newspapers who was attending another hearing at the time. He urged support of the bill as drafted.

Ian Marquand said he represented the working journalists. He said he believed the bill would restore the original confidentiality act. He felt a reporter should be able to testify without losing the shield of confidentiality. It would enhance the status of a professional journalist, he said, and urged a Do Pass recommendation.

Questions From Committee Members: There were none.

Closing by Sponsor: The hearing closed.

DISPOSITION OF SENATE BILL 322

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Brown MOVED that Senate Bill 322 DO PASS. The MOTION CARRIED UNANIMOUSLY.

HEARING ON HOUSE BILL 123

Presentation and Opening Statement by Sponsor: Representative Spaeth of Joliet, representing District 84, opened the hearing saying its purpose was adopting uniform enforcement of the Foreign Judgments Act.

List of Testifying Proponents and What Group they Represent:

Dean Bob Sullivan, retired deal of the UM Law School  
Allen Chronister, Montana State Bar  
Bill O'Leary, Montana Banking Association

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Dean Sullivan said he was one of the Uniform Commissioners of the state of Montana. The bill came out of the Uniform Laws Conference, was promulgated in 1964 and has been passed by 35 states. Each legislative year, the Commission presents suggested legislation to the governor and this was one of those bills, he said. He read from the report (Exhibit 2) and explained how it worked. He said the benefit to the state of Montana was that no second trial was necessary to enforce the judgment. Also, it should reduce the time for judgment and should reduce court congestion and delay. He encouraged passage of the bill.

Allen Chronister said the bill would aid both the courts and the practicing attorneys.

Bill O'Leary said the banking industry wished to appear as a proponent of the bill.

Questions From Committee Members: Senator Pinsoneault wondered if this law was reciprocal. Dean Sullivan said there was no reciprocal provision in the act. But, it is not necessary if dealing with a state that has the law on the books, he stated.

Senator Mazurek said there had been a concern regarding the bill if another state issued a default judgment on a Montana citizen, perhaps for a credit card issued in the other state. He wondered if there should be concern. Dean Sullivan didn't think Montana people would have a lot to fear in the act because, if there were reasons for "staying," they can be filed in a judgment proceeding. He said the scenario could happen, but he didn't think it was likely.

Senator Bishop asked about Section 2 on page 2, the word "promptly". He wondered if the debtor would be notified before someone executed judgment against them. Dean Sullivan said the act provides that a judgment can be filed in the court with the clerk of court giving notice. In the alternative, the judgment creditor could give notice to the debtor. So, he said, adequate notice would be given.

Closing by Sponsor: The sponsor closed the hearing.

#### DISPOSITION OF HOUSE BILL 123

Discussion: Senator Bishop asked further about the use of the word "promptly". He said it was conceivable that the filed execution at the same time they received the notice. He felt "promptly" was not specific. He felt the judgment debtor may need more time than given.

Amendments and Votes: None

Recommendation and Vote: Senator Mazurek MOVED that HOUSE BILL 123 DO PASS. After Senator Bishop's question on the word "promptly," Senator Mazurek WITHDREW his motion.

#### HEARING ON HOUSE BILL 107

Presentation and Opening Statement by Sponsor: Representative Gary Spaeth of Joliet, District 84, said the bill was to

raise the justice's court filing fee from \$10 to \$25 when filing a complaint in a civil instance, and when filing in a claims court from \$5 to \$10. The county officials in his county thought that the fees were too low considering the caseload and the time spent running the justice court. Last session, the district court filing fees were raised to \$60. This raise would keep the fees current, he thought, as they hadn't been raised in quite some time. They didn't come close to paying for costs or keeping up with inflation, but would help some, he said.

List of Testifying Proponents and What Group they Represent:

None

List of Testifying Opponents and What Group They Represent:

None

Testimony:

There was none.

Questions From Committee Members: Senator Halligan said this bill had been proposed last session, but it was felt that raising the fees might discourage people, particularly landlords, from using small claims court. Rep. Spaeth said that hadn't been mentioned to him. People in collections were the ones he spoke to and they said they had no problem with the raise in fees. Some of the justices of peace wanted to raise all fees in the specific section of statute, but he preferred not to do that. The bill originally had asked a raise from \$5 to \$15, but eventually was changed to \$10.

Senator Pineseault asked if the money was used to defray court costs. Rep. Spaeth said it stayed in the county coffers. He said the Montana Association of Counties had not been able to come to the hearing, but did appear in favor of the bill in the House.

Senator Crippen said he understood that Judge Hernandez in Billings was interested in the bill. Rep. Spaeth said that he had heard from 3 or 4 justices.

Closing by Sponsor: Representative Spaeth closed the hearing.

DISPOSITION OF HOUSE BILL 107

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Harp MOVED that House Bill 107 BE CONCURRED IN. The MOTION CARRIED UNANIMOUSLY.

HEARING ON SENATE BILL 324

Presentation and Opening Statement by Sponsor: Senator Tom Beck of Deer Lodge, District 24, saying that Senate Bill 324 was Recommendation #7 coming from the interim study on criminal control and corrections. The bill proposes to discharge a probationer from supervision before the expiration of his sentence, to release some of the burden of the parole officers across the state. He distributed some amendments he proposed to the committee (See Exhibit 3) and said they asked the board of pardons to "conditionally" discharge a man from his probationary period.

List of Testifying Proponents and What Group they Represent:

Nick Rotering, Attorney for the Department of Institutions  
Dan Russell, Administrator, Corrections Division and a member of the Governor's Council of Criminal Justice and Corrections.

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Nick Rotering said it would authorize a practice that has been "ongoing" for a number of years regarding probationers and parolees. It is not uncommon for a sentence to have suspended time which is quite often supervised, but in many cases not necessary. The practice relieves parole officers of an unnecessary load.

Dan Russell said the bill provides statutory authority for a long-standing practice. The practice is used most frequently when other states are supervising our people and recommend that supervision be discontinued. If the

person has repaid all restitution, has secure employment and good family relationships, it is felt they he can be discharged from frequent checks. He still must report annually and would still be subject to revocation for any violation of the law. There are currently 39 individuals on conditional supervision out of a total caseload of 3200. These people served 4 1/2 years in prison and had an average sentence length of 26 years. Only about one request per year is received, he said, and he supported the bill.

Questions From Committee Members: There were none

Closing by Sponsor: The hearing was closed by the sponsor.

#### DISPOSITION OF SENATE BILL 324

Discussion: None

Amendments and Votes: Senator Mazurek MOVED that Senator Beck's amendments be accepted by the committee for the bill. The MOTION CARRIED UNANIMOUSLY.

Recommendation and Vote: Senator Mazurek MOVED that Senate Bill 324 DO PASS AS AMENDED. The MOTION CARRIED UNANIMOUSLY.

#### DISCUSSION OF SENATE BILL 255

Senator Harp said some amendments were being prepared for the bill and should be ready tomorrow.

#### DISPOSITION OF SENATE BILL 273

Discussion: Senator Crippen said this bill was a constitutional amendment and there was some concern whether or not the committee could kill the bill. Senator Pineseault said he had an amendment for the bill which had been distributed to the committee on February 3. He asked the committee to refer to the amendment. He said that the amendment would prevent the governor from removing an appointee until he had served out two years of his term.

Senator Jenkins said a House bill would be coming to the Senate asking for a 4-year term.

Senator Pineseault said that, when a person is appointed, it was hoped that he would serve the term. The governor appoints people he hopes share some of his attitudes and philosophy.

If the appointee and the governor find they do not agree, the governor should have the option of removing, Senator Pinsoneault thought.

Senator Mazurek applauded Senator Pinsoneault's efforts but didn't think the amendment solved the problem with the bill. He felt the constitution was drafted as it was to remove the situation from politics. Senator Pinsoneault thought the governor should be allowed to govern. Senator Bishop said he felt the bill would stifle the members of the Board of Regents.

Amendments and Vote: Senator Pinsoneault MOVED his amendment. After discussion, the amendment was voted upon and CARRIED by a 8 to 2 vote with Senators Yellowtail and Beck voting NO.

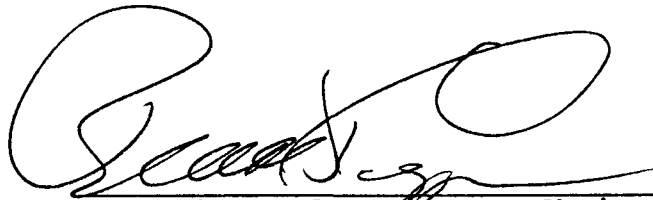
Recommendation and Vote: Senator Beck MOVED that Senate Bill 273 DO NOT PASS. Senator Pinsoneault MOVED A SUBSTITUTE MOTION of DO PASS. Senator Mazurek MOVED a SUBSTITUTE MOTIONS for all motions pending of TABLING the bill as amended. The MOTION CARRIED by a vote of 6 to 4, with Senators Harp, Jenkins, Pinsoneault and Crippen voting NO.

#### DISPOSITION OF SENATE BILL 241

Recommendation and Vote: Senator Mazurek MOVED that Senate Bill 241 DO PASS. The MOTION CARRIED UNANIMOUSLY.

#### ADJOURNMENT

Adjournment At: 11:00 a.m.



SENATOR BRUCE CRIPPEN, Chairman



ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date 2-6-89

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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

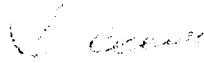
February 6, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration SB 322 (first reading copy -- white), respectfully report that SB 322 do pass.

DO PASS

Signed



Bruce D. Crippen, Chairman

4/16/89  
2/9/89

SENATE STANDING COMMITTEE REPORT

February 6, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 107 (third reading copy -- blue), respectfully report that HB 107 be concurred in.

Sponsor: Spach (Jenkins)

BE CONCURRED IN

Signed: \_\_\_\_\_

Bruce D. Crippen, Chairman

4/6  
2/6/89  
3:42 p.m.

SENATE STANDING COMMITTEE REPORT

February 6, 1939

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration SB 324 (first reading copy -- white), respectfully report that SB 324 be amended and as so amended do pass:

- 1. Title, line 4.  
Following: "TO"  
Insert: "CONDITIONALLY"
- 2. Title, line 6.  
Following: "TO"  
Insert: "CONDITIONALLY"
- 3. Page 2, line 12.  
Following: "may"  
Insert: "conditionally"
- 4. Page 2, line 14.  
Following: "that"  
Insert: "a conditional"
- 5. Page 2, line 19.  
Following: "been"  
Insert: "conditionally"
- 6. Page 3, line 18.  
Following: "may"  
Insert: "conditionally"
- 7. Page 3, line 20.  
Following: "that"  
Insert: "a conditional"
- 8. Page 3, line 24.  
Following: "been"  
Insert: "conditionally"

AND AS AMENDED DO PASS

Signed:

Bruce D. Crippen, Chairman

M.C.  
2/6/39  
2:40  
P.M.


SENATE STANDING COMMITTEE REPORT

February 6, 1969

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration SB 241 (first reading copy -- white), respectfully report that SB 241 do pass.

DO PASS

Signed:   
Bruce D. Crippen, Chairman

*Handwritten notes:*  
H.C. 157  
316  
2.7.69

*Brad Nurd*

SENATE JUDICIARY  
EXHIBIT NO. 1 P.1  
DATE 2-6-89  
BILL NO. SB 322

SB 322--A BILL TO REVISE THE MEDIA CONFIDENTIALITY ACT

The Media Confidentiality Act is generally referred to as a "shield law". Twenty-six states, including Montana, has such a law.

The intent of the Media Confidentiality Act is to protect news organizations from having to give certain information to litigants. It protects confidential information, sources, reporter's notes and unpublished materials.

Recently, New York State's highest court, the New York Court of Appeals, unanimously backed a news organization's First Amendment claim that it should not have to share its unpublished information with litigants. In O'Neill v. Oak Grove Construction, Inc., et al., 523 N.E.2d (1988), the court stated, "[t]he practical burden on time and resources, as well as the consequent diversion of journalistic effort and disruption of news gathering activity, would be particularly inimical to the vigor of a free press." That decision echoes many others across the country which have determined that a news organization's unpublished material is akin to an attorney's work product and should remain privileged.

SB 322 would restore the privilege intended by the Media Confidentiality Act. The privilege was severely restricted in a decision by the Montana Supreme Court. In Sible v. Lee Enterprises et al., 729 P.2d 1271 (1986), Justice Frank Morrison determined that a reporter waived his privilege to keep his notes confidential once the reporter agreed to testify in

deposition or at trial.

Under the court's interpretation of the statute, the only way a reporter could invoke the privilege is if he or she refused to testify, even if subpoenaed, and face a default judgment. SB 322 restores the protection the Media Confidentiality Act was intended to provide.





Dean Sullivan  
read from 4,

SENATE JUDICIARY

EXHIBIT NO. 2, P. 7

DATE 2-6-87

BILL NO. HB 123

Reciprocal Enforcement of Support  
Residential Landlord and Tenant  
Rights of Terminally Ill  
Simplification of Fiduciary Security Transfers  
Simultaneous Death  
Status of Convicted Persons  
Testamentary Additions to Trusts  
Trade Secrets  
Transboundary Pollution Reciprocal Access  
Transfers to Minors  
Trustees Powers  
Unclaimed Property

#### MODEL ACTS

Administrative Procedure  
Audio-Visual Deposition (By Supreme Court Rule)

#### VII. RECOMMENDATIONS FOR ENACTMENT BY 1989 LEGISLATURE

1. Criminal History Records Act. Governs the gathering, maintenance, and disclosure of information on the arrest, prosecution, sentencing and punishment of specific individuals as collected by law enforcement agencies and establishes a central repository for gathering this information from all law enforcement agencies in a state. The act provides for varying levels of access to the information.
2. Disposition of Community Property at Death. Deals with the subtle problem of community property brought into a non-community state, one of life's complications which lawyers would like to pretend does not exist. The act requires that, upon death, assets must be traced to their community of origin, if any.
3. Dormant Mineral Interests. Establishes the criteria by which a severed mineral interest in real estate becomes dormant. Once a mineral interest becomes dormant, it may be merged with the surface interest in an action to quiet title. A mineral interest becomes dormant if there is no actual "use" of the interest for twenty years or more. The term "use" means exploring for or taking minerals, generally, but includes such exercises of ownership as paying taxes on the interest or recording a judgment pertaining to it, as well. Even if a holder of a mineral interest does not use it, the interest can be kept current by filing a "notice of intent to preserve" in the real property records.
4. Enforcement of Foreign Judgments. Article IV, Section 1, of the Constitution of the United States requires each state to give full faith and credit to the official acts and judgments of every other state. The "full faith and

credit" clause unites the states in a very practical way and is meant to prevent abuses of jurisdiction experienced during the period of time when the original states were under the Articles of Confederation. Even though "full faith and credit" is mandatory, the states have never wholly resolved the problem of its implementation. The Act settles one of the problems of states' complying with the U.S. Constitution's full faith and credit clause. It permits enforcement of a judgment of another state upon the mere act of filing it in the office of a Clerk of Court. The act of filing the foreign judgment gives it the effect of being a judgment of the court in the state in which it is filed. The process of enforcement then goes forward as if the judgment were a domestic one.

5. Fraudulent Transfers. Revises the Uniform Fraudulent Conveyance Act of 1918. Creates a class of transfers of property by debtors that is fraudulent to creditors. This class of transfers would, generally, have the effect of depriving creditors of assets that would, otherwise, be available to satisfy debts when the debtor becomes insolvent or is about to become insolvent. Transfers that are intended to defraud creditors, that are made "without receiving reasonably equivalent value" to make the debtor "judgment proof", or that are made "without receiving reasonably equivalent value" when the debtor is insolvent are examples of fraudulent transfers. Such transfers are generally voidable on behalf of creditors. The new Act is more specific on what constitutes fraud and introduces new law on "insider" transactions and on the effect of fraudulent transfers on innocent transferees.

6. Statutory Rule Against Perpetuities. Validates nonvested future interests in property as the common-law "Rule Against Perpetuities" does, by measuring the time for vesting in terms of lives in being plus 21 years. In contrast to the common-law Rule, the Statutory Rule does not invalidate future interests that may, even against enormous probabilities, not vest within the prescribed time. The Uniform Rule provides a 90-year period in which de facto vesting of an interest can take place. If an interest actually vests within the 90 years, it is valid, even though its vesting is not, hypothetically, an absolute certainty at the time the future interest is created. The Rule also provides a procedure by which a court may vest interests within the allotted 90-year time to avoid invalidity. In addition, the Rule carefully sets out the kinds of interests that are excluded from the operation of the Perpetuities Rule.

7. Anatomical Gift (1987). The 1987 revision of the original 1969 Uniform Anatomical Gift Act retains the principal provisions of the earlier Act, that of a "document of gift" which permits any competent adult to

Amendments to Senate Bill No. 324  
First Reading Copy

Requested by Senator Tom Beck  
For the Senate Judiciary Committee

Prepared by Lois Menzies  
February 5, 1989

1. Title, line 4.  
Following: "TO"  
Insert: "CONDITIONALLY"
2. Title, line 6.  
Following: "TO"  
Insert: "CONDITIONALLY"
3. Page 2, line 12.  
Following: "may"  
Insert: "conditionally"
4. Page 2, line 14.  
Following: "that"  
Insert: "a conditional"
5. Page 2, line 19.  
Following: "been"  
Insert: "conditionally"
6. Page 3, line 18.  
Following: "may"  
Insert: "conditionally"
7. Page 3, line 20.  
Following: "that"  
Insert: "a conditional"
8. Page 3, line 24.  
Following: "been"  
Insert: "conditionally"

ROLL CALL VOTE

JUDICIARY

Senate Bill No. 273 Time <sup>#</sup> 1

	YES	NO
	✓	
		✓
	✓	
	✓	
	✓	
	✓	
	✓	
	✓	
		✓
	✓	

8 . to 2

Sen. Bruce Crippen  
Chairman

Amend. - Passed 8 to 2

No. 273 Time <sup>#</sup> 2

	YES	NO
	✓	
	✓	
	✓	
	✓	
		✓
		✓
	✓	
		✓
	✓	
		✓

6 . to 4

Bruce Crippen  
man

tion - Do Pass  
nded - 6 to 4

Amendments to Senate Bill No. 273  
First Reading Copy (WHITE)

Requested by Senator Pinsonneault  
For the Committee on Judiciary

Prepared by Valencia Lane  
February 2, 1989

1. Title, line 6.

Following: "GOVERNOR"

Insert: ", WITH RESTRICTIONS,"

2. Page 2, lines 5 and 6.

Following: "law."

Strike: remainder of line 5 through "governor." on line 6

3. Page 2, line 8.

Insert: "(c) The governor may, in his discretion and not less than  
2 years after a member is confirmed by the senate, remove a  
member of the board and appoint a replacement."

Renumber: subsequent subsections