

MINUTES

MONTANA SENATE 51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bruce Crippen, on February 8, 1989, at 10:00 a.m.

ROLL CALL

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

Members Excused: None

Members Absent: None

Staff Present: Staff Attorney Valencia Lane and Committee Secretary Rosemary

Announcements/Discussion: There was none.

HEARING ON SENATE BILL 338

Presentation and Opening Statement by Sponsor: Senator Joe Mazurek of Helena, representing District 23, opened the hearing on SB 338 saying he introduced the bill at the request of former District Judge Gordon Bennett. The bill would authorize a county fund for victim restitution, he said. Larger counties have seen a growth of restitution being imposed during sentences. Many counties have set up restitution programs and someone has to administer them, he said. Payment is made on a regular basis and a monthly schedule must be set up. In the event there is a sentence with restitution provided, and the victim moves leaving no forwarding address, the restitution money received can be placed in a fund established under the bill. This fund would be called the County Restitution Fund. The law would require that restitution would be given to the victim once he is relocated by those administering the fund.

Money accumulated in the restitution fund could also be used to pay victims, when the offender is unable to

pay. In those cases, the offender would be required to perform public service and the money allowed him for the work would go into the fund.

Thirdly, there would be a \$5 handling fee charged to the offender for administering the restitution.

He said that Judge Tom Honzel had intended to come to the hearing, but was unable. He said that Lewis and Clark County had a very successful restitution fund.

He called the committee's attention to page 1, line 17, where it says the ordering of restitution is limited to the district court. However, he has learned from Wallace Jewell that it is used in justices' courts as well. He thought that may need further study.

List of Testifying Proponents and What Group they Represent:

Penny Sey, restitution officer for the First District Court

Mark Mizner-Welch, Youth Services

Linda Stoll-Anderson, Lewis and Clark County Commissioner

Wallace Jewell, Montana Magistrates Association

George Bennett, Former District Court Judge

Cheryl Bryant, Justice Department, Crime Victims' Compensation

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Penny Sey testified in favor of the bill. (Exhibit 1)

Mark Mizner-Welch said that he worked in Lewis and Clark County supervising youth doing public service as a part of their sentences. The program already passes on part of the administrative cost in the form of a \$3 surcharge that is assessed to every juvenile in the program. He said he had not had any problem to date with juveniles being able to pay the \$3. Many of them have been are not employed, but seem to have money to cruise the drag or buy drugs or alcohol. In many cases, it is the parents who pay because juveniles are still the responsibility of their parents, he recognized. Counties are short of funds and the bill would allow some of the costs to be met, he said. The bill also holds the offender more accountable for his action. They

are, he stated, paying a "user" fee in a sense. He also agreed with the provisions allowing the fund to be set up and administered. He felt it would be beneficial to the offender and the victim.

Linda Stoll-Anderson said emergency levies had to be employed to fund the district court in the last year. She urged passage of the bill.

Wallace Jewell presented written testimony in favor of the bill. (See Exhibit 2)

George Bennett said told of his son when 12 years old being apprehended by the police for removing hood ornaments from cars in the Mountain Bell parking lot. When his son was sentenced, he was placed in the restitution program under Penny Sey, said Mr. Bennett. He felt the program was excellent. He said that the restitution program was well administered and, as far as he knew, deterred his son from further crime.

Cheryl Bryant presented written testimony in favor of the bill. (See Exhibit 3)

Questions From Committee Members: Senator Beck asked if Penny Sey knew how much money had been turned back for lack of finding the victim. She said she didn't know. She said she takes the money to the clerk of court and, if the person isn't found within 7 years, it goes to the state.

Senator Beck asked if this was asking for a separate general fund outside of the district court. Senator Mazurek said the intention was to have a special revenue account into which the money would be placed.

Senator Beck asked what the need was for the bill if a special levy could take care of the shortage of funds. Linda Stoll-Anderson said the intention was to set up a revolving fund that would eventually pay for itself.

Senator Halligan asked if counties couldn't already do what the bill provided. Senator Mazurek said they can't assess the fee on the victim. This bill would place the fee in a special fund, not the general fund, which requires authority to do that. In the Unclaimed Property Act, there is a requirement that unclaimed funds go to the state, he said.

Senator Halligan asked where these funds would be used. Penny Sey said they may be disbursed for attorney fees and the surcharge goes into the attorney attorney's office. Wally Jewell said that justice court's cost of prosecution comes from the general fund. He felt the county restitution would be a separate entity.

Closing by Sponsor: Senator Mazurek said he would work out the problems that had been mentioned. He closed the hearing.

HEARING ON SENATE BILL 138

Presentation and Opening Statement by Sponsor: Senator Bob Brown of Whitefish, District 2, said this bill had been heard before in the Business and Industry Committee. It required loan contracts be in writing. The lending institutions presented an amendment which was considered by the committee previously. The committee decided the bill needed further study and that is the reason for the present hearing, he said.

List of Testifying Proponents and What Group they Represent:

George Bennett, Montana Banking Association
Frank Shaw, Pres., Norwest Bank, Great Falls
Doug Morheim, Kalispell bank president
Chip Erdman, Helena, representing Montana Savings and Loan Institutions
Roger Tippy, Montana Independent Bankers

List of Testifying Opponents and What Group They Represent:

Michael Sherwood, Montana Trial Lawyers
Charles Brooks, Montana Retail Association

Testimony:

George Bennett (Exhibit 4) said the bill deals with a situation where a contract had to be in writing. The concept came out of a commercial lending committee in the banking association. The language was from another state, he stated. After the bill was heard in the Business and Industry Committee and other concerns were

raised, an amendment was prepared. He presented copies of the amendment to the committee. (Exhibit 4, page 3)

Frank Shaw gave an example of the problem that existed. The bank, he said, had a family on the highline who were customers. They ran an implement dealership and also a farming operation. In 1979, a loan agreement involving the dealership was signed for a period of 10 years. Since then, there have been 3 different loan officers handling the account, two of which were no longer with the bank, he stated. The family claimed that 2 oral loans had been made. The father is now dead and the son believes there is an obligation for the bank to honor the purported agreement with his father. He said the problem has been worked out, but he felt this type of situation should be addressed.

Doug Morheim said the bill would provide clarification for loans and the terms of those loans. It would close the door to oral commitments, he said, and avoid frivolous law suits. The banks would be able to avoid high-risk loans, which in turn would make for fewer suits. Law suits are expensive and the costs have to be passed on to the bank's customers. He felt it could reduce liability insurance for bank officers and directors as well.

Chip Erdman said the bill would provide certainty for the lending institutions. He felt that, because some written contracts were required in the statute of fraud, written contracts for loans should also be required.

Roger Tippy appeared as a proponent for his association.

Michael Sherwood appeared as an opponent to the bill. He presented written testimony to the committee.
(Exhibit 5)

Charles Brooke said he had some concerns with the bill. He hoped they would be addressed by the amendment that was being proposed by Mr. Bennett.

Questions From Committee Members: Senator Yellowtail said that some of the testimony had referred to "sophisticated" borrowers. Mr. Bennett said the bill had attempted to be limited to that type of borrower.

Senator Beck posed a situation as follows: A borrower came to a lending institution to borrow \$30,000 for a home and the banker commented that it looked pretty good. The man makes a down payment on the house, but when the credit report came into the lending institution, it showed unpaid bills and bad credit. If the bank didn't then give the loan, would the customer have redress, he asked.

Mr. Sherwood said no, but that if a bank wants to protect itself against a situation in which they have not actively made a commitment, they should hand the man a note saying the negotiation that had taken place was not a commitment. Senator Beck said that the bill was requiring just that -- a written contract.

Mr. Sherwood said an unsophisticated person wouldn't know that unless the banker notified him of the fact that the loan wasn't promised. He suggested a note to the effect be used.

Senator Halligan said that oral agreements were made all the time and that people later signed the contracts. He felt the bill was contrary to the entire commercial codes. Mr. Bennett said it was his understanding that the uniform commercial codes require contracts or a memo for sales under \$5,000. He said those codes recognize agreements between traders. But, in this case, the loan officer is negotiating "what ifs". And there will be a contract.

Senator Halligan said the problem is a modification of an existing loan of money from a lender. He suggested an amendment saying the contract would not be valid unless a modification to existing contract for the loan from a lender primarily in that business over \$10,000 must be in writing.

Mr. Bennett said, if the lender ultimately makes a loan, there is going to be a loan document. That wasn't his concern, he said. But, the situation where there have been negotiations and has been no loan or loan agreement is where the problem exists. He gave a possible situation: Suppose, he said, there has been a business loan for the Christmas season made to a retailer, and the retailer tells the bank the next year that an oral promise had been made the year previously. If the situation has changed and the bank doesn't wish to loan the person money the following year, he is

accused of having an oral contract and possibly sued.

Closing by Sponsor: Senator Brown closed the hearing.

DISPOSITION OF SENATE BILL 138

Discussion: George Bennett said the amendments addressed the concerns about charge accounts and credit card users.

Amendments and Votes: Senator Beck MOVED the Bennett Amendments. The MOTION CARRIED on a vote of 9 to 1 with Senator Halligan voting NO.

Recommendation and Vote: Senator Yellowtail MOVED that Senate Bill 138 BE TABLED. The MOTION FAILED on a vote of 3 to 6, with Senators Halligan, Yellowtail and Crippen voting YES and Senator Jenkins not voting as he was temporarily absent.

Senator Beck MOVED that Senate bill 138 DO PASS AS AMENDED. The MOTION CARRIED by a vote of 5 to 4 with Senators Halligan, Mazurek, Yellowtail and Crippen voting NO and Senator Jenkins not voting as he was temporarily absent.

EXECUTIVE SESSION

DISPOSITION OF SENATE BILL 255

Discussion: Senator Yellowtail distributed copies of a letter he had received from Leonard Colvin regarding the bill. (See Exhibit 6)

Valencia Lane distributed copies of amendments proposed by Senator Harp (Exhibit 7). Senator Harp told the committee that Mark Racicot had no objections to the amendment, but that he had suggested inserting "as a peace officer". Valencia read the definition of a peace officer.

Senator Mazurek was concerned about "OR" on line 18 saying he thought it would focus on the labor context. He felt it was a major expansion. Senator Harp said the amendments had been suggested by the Montana Public Employees Association.

Amendments and Votes: Senator Harp MOVED the amendments. The Motion CARRIED UNANIMOUSLY.

Senator Harp MOVED a SUBSTITUTE MOTION of an amendment to the Amendments he had proposed: Inserting the Attorney General's suggested language (see discussion above). The MOTION CARRIED UNANIMOUSLY.

Senator Yellowtail MOVED that "or" be removed. The MOTION PASSED by a vote of 8 to 2 with Senators Harp and Crippen voting NO.

Recommendation and Vote: Senator Harp MOVED that Senate Bill 255 DO PASS AS AMENDED. The MOTION CARRIED by a vote of 6 to 4 with Senators Bishop, Halligan, Mazurek and Yellowtail voting NO.

DISPOSITION OF SENATE BILL 123

Discussion: Senator Bishop said the amendment (Exhibit 8) would prevent distribution of property for at least 30 days. This would be fair to both debtor and creditor, he felt. Senator Mazurek spoke in favor of the amendments, saying Nevada and New York had used this law. He said that, even though a bank account might be seized, a person would have 30 days to fight it.

Senator Halligan wondered why the insurance companies hadn't submitted information regarding fraud of claims and with statistics. Other senators felt they should have testified.

Senator Brown felt the people should have another opportunity to vote for the CI 30 issue. Valencia said passing this bill will not revive any law passed last session because it would be judged as it existed at that time.

Amendments and Votes: Senator Bishop MOVED the Amendments. The MOTION CARRIED UNANIMOUSLY.

Recommendation and Vote: Senator Mazurek MOVED that Senate Bill 123 DO PASS AS AMENDED. The MOTION CARRIED UNANIMOUSLY.

DISPOSITION OF SENATE BILL 312

Discussion: None

Amendments and Votes: Senator Harp MOVED that, on page 2, line 1, following "of", strike language that would amend the bill to make it exactly like CI 30. The MOTION CARRIED by a vote of 9 to 1 with Senator Yellowtail voting NO.

Senator Mazurek MOVED an amendment on p. 2, lines 13 and 14, after "damages", to strike "actual economic loss for bodily injury" saying you could recover more than \$250,000; it would take a 2/3 vote of both Houses. The MOTION CARRIED on a vote of 7 to 3, with Senators Beck, Harp and Crippen voting NO.

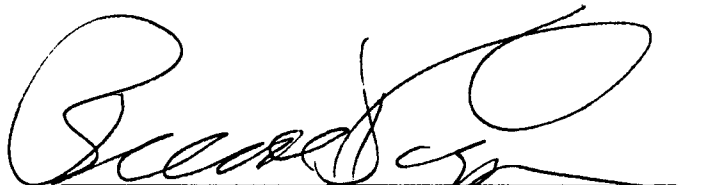
Recommendation and Vote: Senator Pinsoneault MOVED that Senate Bill 312 DO PASS AS AMENDED. The MOTION CARRIED on a vote of 6 to 4 with Senators Bishop, Halligan, Mazurek and Yellowtail voting NO.

DISPOSITION OF SENATE BILL 314

Recommendation and Vote: Senator Brown MOVED that Senate Bill 314 DO PASS. The MOTION CARRIED by a vote of 9 to 1 with Senator Crippen voting NO.

ADJOURNMENT

Adjournment At: 11:45 a.m.



SENATOR BRUCE D. CRIPPEN, Chairman

BDC/rj

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ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date 2-8-89

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

page 1 of 2

February 9, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration SB 138 (second reading copy -- yellow), respectfully report that SB 138 be amended and as so amended do pass:

1. Page 2, lines 5 through 7.

Following: "commission" on line 5

Strike: remainder of line 5 through "credit" on line 7

2. Page 2, line 8.

Following: "in"

Insert: "[section 2] and in subsections (1)"

3. Page 2, line 9.

Following: line 8

Insert: "(1)"

Following: "(d)"

Strike: "and (f) of subsection (1)"

Insert: "of this section"

4. Page 2, line 18.

Following: line 17

Insert: "NEW SECTION. Section 2. Credit agreements to be in writing. A debtor or creditor may not maintain an action on a credit agreement unless the agreement is in writing, expresses consideration, sets forth the relevant terms and conditions, and is signed by the creditor and the debtor. As used in this section, the following definitions apply:

(1) "Credit agreement" means an agreement to lend or forbear repayment of money but does not include promissory notes not a part of a credit agreement, sales, or credit card transaction.

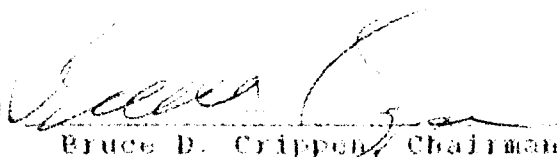
(2) "Creditor" means a person who is engaged primarily in the business of making loans under a credit agreement with a debtor.

(3) "Debtor" means a person who obtains credit, seeks a credit agreement with a creditor, or owes money to a creditor, if such credit is in excess of \$10,000 and not primarily for personal, family, or household purposes.

NEW SECTION. Section 3. Codification instruction.
[Section 2] is intended to be codified as an integral part of
Title 28, chapter 2, part 9, and the provisions of Title 28,
chapter 2, part 9, apply to [section 2].
Renumber: subsequent section

AND AS AMENDED DO PASS

Signed



Bruce D. Crippen, Chairman

SENATE STANDING COMMITTEE REPORT

February 8, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration SB 255 (first reading copy -- white), respectfully report that SB 255 be amended and as so amended do pass:

1. Page 3, line 12.

Following: "may"

Strike: remainder of line 12 through "to" on line 14

2. Page 3, line 21.

Following: line 20

Strike: "designee"

Insert: "designated assistant attorney general"

Following: "who"

Strike: "shall"

Insert: "may"

AND AS AMENDED DO PASS

Signed

Bruce D. Clippert
Bruce D. Clippert, Chairman

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SENATE STANDING COMMITTEE REPORT

February 9, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 123 (third reading copy -- blue), respectfully report that HB 123 be amended and as so amended be concurred in:

Sponsor: Spaeth (Hazurek)

1. Page 2, lines 1 through 21.

Strike: section 4 in its entirety

Insert: "NEW SECTION. Section 4. Notice of filing. (1) At the time of the filing of the foreign judgment, the judgment creditor or his attorney shall file with the clerk of the court an affidavit setting forth the name and last known post office address of the judgment debtor and the judgment creditor. The affidavit must also include a statement that the foreign judgment is valid and enforceable, and the extent to which it has been satisfied.

(2) Promptly upon filing the foreign judgment and affidavit, the judgment creditor or someone on his behalf shall mail notice of the filing of the judgment and affidavit, attaching a copy of each to the notice, to the judgment debtor and to his attorney of record, if any, each at his last-known address by certified mail, return receipt requested. The notice must include the name and post-office address of the judgment creditor and the judgment creditor's attorney, if any, in this state. The judgment creditor shall file with the clerk of the court an affidavit setting forth the date upon which the notice was mailed.

(3) The proceeds of an execution must not be distributed to the judgment creditor earlier than 30 days after the date of mailing the notice of filing."

AND AS AMENDED BE CONCURRED IN

Signed: 
Bruce D. Crippen, Chairman

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SENATE STANDING COMMITTEE REPORT

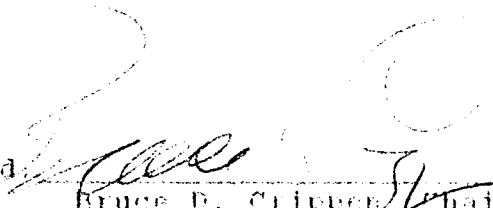
February 9, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration SE 312 (first reading copy -- white), respectfully report that SE 312 be amended and as so amended do pass:

- 1. Title, lines 14 and 15.
Following: "DAMAGES" on line 14
Strike: remainder of line 14 through "INJURIES" on line 15
- 2. Page 2, line 1.
Following: "of"
Strike: "this full"
- 3. Page 2, lines 13 and 14.
Following: "damages" on line 13
Strike: remainder of line 13 through "injury" on line 14

AND AS AMENDED DO PASS


 Signed: _____
 Bruce D. Crippen, Chairman

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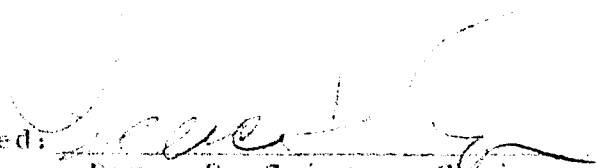
SENATE STANDING COMMITTEE REPORT

February 8, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration SB 314 (first reading copy -- white), respectfully report that SB 314 do pass.

DO PASS

Signed: 
Bruce G. Crippen, Chairman

7/10
2/19/89
12: 2-11

Penny Sey

The Restitution Program of the 1st Judicial District Court was initially funded by the Montana Board of Crime Control as a pilot project in 1978. The original intent of the funding was to hold juveniles accountable for their actions by paying restitution to the victims of their offenses.

In 1980, the 1st Judicial District Court assumed the funding of the Restitution Program and expanded the Program to include adult offenders. Since 1980, the Restitution Program of the 1st Judicial District Court has supervised juveniles and adults in the paying of restitution, attorney fees, fines, drug fund fines, the mandatory surcharge and other costs levied by the sentencing court. In addition, the Program develops and monitors placement of offenders who are ordered to do community service hours. The Restitution Program was able to secure its own insurance to cover any and all participants in the performance of community service hours. The costs of the insurance policy for participants is \$3.00 and is paid by the defendant prior to their placement in the community.

On the average, the Restitution Program of the 1st Judicial District Court collects \$75 to \$80,000 dollars per year; specifically, 1987 collection efforts totaled \$71,793.60, whereas in 1988, a total of \$77,160.61 was collected and disbursed to victims; the County's General Fund and the District Court as reimbursement for the expenditure of attorney fees.

We feel this proposed bill holds the offender even more accountable. A handling fee would help to off set the increased postage costs incurred by the Program.

In order for this Office to assist the victims of crime, it is ~~xxxxxx~~ our policy to mail a claim form to each victim and in some instances, multiple victims along with a self-addressed, stamped envelope. In this manner, it is felt that the victims of crime are not inconvenienced any more than they are by having to take the time to come to this Office to document their loss. In addition, each defendant's payment is disbursed within the month it is received. ~~xxxxxx~~

The proposed bill has been reviewed by the Honorable...
who support the passage of this bill

Montana Magistrates Association

8 February 1989

Testimony offered in support of SB 338, a bill for an act entitled: "An act relating to victim restitution; authorizing the creation of a county restitution fund consisting of restitution payments made to victims whose locations are unknown; providing that the fund be used to make restitution payments to victims on behalf of offenders who perform community service work; authorizing a handling fee not to exceed \$5 per supervised restitution payment."

Given by Wallace A. Jewell on behalf of the Montana Magistrates Association representing the judges of courts of limited jurisdiction of Montana.

The Montana Magistrates Association is in favor of this legislation; we hope that the judges of courts of limited jurisdiction will statutorily be able to be participants in ordering payments to and from the county restitution fund on behalf of victims of crimes that are adjudicated in the limited jurisdiction courts.

On a more practical note, I am not sure that the \$5 handling fee is large enough. If the purpose of the handling fee is to offset payments made on behalf of offenders who will be doing community service work to satisfy their restitution then the handling fee should be much larger. The number of offenders who only have enough money to buy alcohol and get into trouble and would need to do community service to make restitution is far greater than the number of offenders who would have the money to make restitution without doing community service.

Wallace A. Jewell

Cheryl Bryant

SENATE JUDICIARY
EXHIBIT NO. 310.1
DATE 2-8-89
BILL NO. SB 338

TESTIMONY ON SB 338 FOR SENATE JUDICIARY COMMITTEE

Restitution to an innocent victim of crime is appropriate and worthy of consideration. The problem with restitution is that many offenders do not have the money to pay restitution for all the damage caused to a victim or even make full payment for all the medical expenses or wage loss. Restitution in some cases may consist of small payments made over several years after several years have lapsed.

The county restitution fund appears to provide a vehicle to allow offender A to make money payments into the county fund and offender B to perform community service which could be counted hourly at the minimum wage. The money may be used to pay for victim A's losses or victim B's losses or victim Z's losses. This is basically how the Crime Victims Compensation Fund operates. A percentage of the criminal fines from justice of the peace courts are paid into the fund. Innocent victims who are injured apply to receive those monies for medical expense, wage loss or funeral expense.

One of the reasons the Crime Victims Compensation Act was enacted was the inadequacy of restitution, the length of time it took for restitution to be paid and the small payments by the offender. The Crime Victims Compensation Act provides for these problems by paying the medical expenses, wage loss or funeral expense. At least the victim has been taken care of, regardless of the length of time restitution may take.

Cheryl Bryant

There is no provision in the bill which accounts for a victim who has applied for and received benefits from the Crime Victims Compensation Fund. The Crime Victims Compensation Act has provision which makes crime victims benefits secondary to any payments by an offender. There are also subrogation provisions in the Statute and in Section 46-18-248.

A victim may be able to receive money from the county restitution fund. These payments would be a primary source of payment for a victim instead of payment from the crime victims fund. The county restitution fund does not appear to have any priorities set out on which victims will be paid. A victim could recover if there is money in the fund. It appears that the first victim to notify the county fund of his claim is the victim that collects.

An innocent victim may end up waiting longer to receive benefits under the Crime Victims Compensation Act because the county restitution fund may have funds available to pay part of the expenses.

Cheryl Bryant

TESTIMONY OF MONTANA BANKERS ASSOCIATION -**GEORGE T. BENNETT, COUNSEL****IN SUPPORT OF SENATE BILL NO. 138**

This bill, as introduced, would amend § 28-2-903, MCA, a provision known as the "stautute of frauds." The bill was originally assigned to the Senate Business Committee where it received a do pass recommendation by that committee. On second reading questions were raised about the language of the bill. The bill was then sent to the Senate Judiciary Committee for consideration.

Because of the concerns expressed formally and informally by legislators and others, it is now the recommendation of MBA that the bill be amended, that a new subsection (3) be added to Section 28-2-903, MCA, which would read as set forth in Exhibit A to this testimony.

Exhibit A hereto, the proposed amendment to Senate Bill 138, would require that the present new material contained in the bill be stricken, that a new subsection (3) be added to Section 28-2-903, and the subsequent subsections renumbered.

The proposed amendment is patterned after an enactment by the State of Minnesota. The Minnesota enactment is attached as Exhibit B, being § 513.33 "Credit Agreements," a part of the Minnesota codes enacted in 1985.

The proposed subection (3) by use of definition would eliminate from coverage:

- All credit created other than by the lending of money.
- Sales transactions, including sales by public utilities and other vendors of goods or services.
- Credit card transactions.
- Promissory notes, other than a promissory note given as a part of the credit agreement.
- Would exclude loans by persons, firms or corporations not "engaged primarily in the business of making loans."
- Loans in the amount of \$10,000.00 or less.
- Loans primarily for personal, family, or household purposes.

The proposed new subsection (3) does not go as far as the Minnesota act since it does not deal with the rendering of financial advice, consultation, fiduciary or other relationships.

The purpose of the statute of frauds, or any statute requiring an agreement to be in writing, as the name implies, is to prevent overreaching, deceit, misunderstandings, and similar problems in the negotiation and formation of a contract or agreement. The major underlying purpose also is to facilitate commerce and to eliminate unnecessary and expensive litigation where sophisticated parties should have, and could have, reduced their agreements to writing.

The thrust of proposed subsection (3) (Exhibit A) would require sophisticated creditors to obtain in writing any commitments they feel lenders have made.

PROPOSED AMENDMENTS TO SENATE BILL 138

To be added as a new subsection to § 28-2-903, MCA, or as a new section to Title 28, Chapter 2, Part 9.

"(3) A debtor or creditor may not maintain an action on a credit agreement unless the agreement is in writing, expresses consideration, sets forth the relevant terms and conditions, 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 not a part of a credit agreement, 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, if such credit is in excess of \$10,000.00 and not primarily for personal, family, or household purposes."

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- 513.26 [Repealed, 1987 c 19 s 12]
 513.27 [Repealed, 1987 c 19 s 12]
 513.28 [Repealed, 1987 c 19 s 12]
 513.29 [Repealed, 1987 c 19 s 12]
 513.30 [Repealed, 1987 c 19 s 12]
 513.31 [Repealed, 1987 c 19 s 12]
 513.32 [Repealed, 1987 c 19 s 12]

513.33 CREDIT AGREEMENTS.

Subdivision 1. Definitions. For the purposes of this section, the following terms have the meanings given them:

(1) "credit agreement" means an agreement to lend or forbear repayment of money, goods, or things in action, to otherwise extend credit, or to make any other financial accommodation;

(2) "creditor" means a person who extends credit under a credit agreement with a debtor; and

(3) "debtor" means a person who obtains credit or seeks a credit agreement with a creditor or who owes money to a creditor.

Subd. 2. Credit agreements to be in writing. A debtor may not maintain an action on a credit agreement unless the agreement is in writing, expresses consideration, sets forth the relevant terms and conditions, and is signed by the creditor and the debtor.

Subd. 3. Actions not considered agreements. (a) The following actions do not give rise to a claim that a new credit agreement is created, unless the agreement satisfies the requirements of subdivision 2:

(1) the rendering of financial advice by a creditor to a debtor;

(2) the consultation by a creditor with a debtor; or

(3) the agreement by a creditor to take certain actions, such as entering into a new credit agreement, forbearing from exercising remedies under prior credit agreements, or extending installments due under prior credit agreements.

(b) A credit agreement may not be implied from the relationship, fiduciary, or otherwise, of the creditor and the debtor.

History: 1985 c 245 s 1

FRAUDULENT TRANSFERS**513.41 DEFINITIONS.**

As used in sections 513.41 to 513.51:

(1) "Affiliate" means:

(i) a person who directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than a person who holds the securities,

(A) as a fiduciary or agent without sole discretionary power to vote the securities;

(B) solely to secure a debt, if the person has not exercised the power to vote;

(ii) a corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person who directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than a person who holds the securities,

(A) as a fiduciary or agent without sole power to vote the securities; or

(B) solely to secure a debt, if the person has not in fact exercised the power to vote;

(iii) a person whose business is operated by the debtor under a lease or other

Testimony of Michael Sherwood, MTLA
OPPOSING HOUSE SENATE BILL 138
February 7, 1989

MTLA opposes this bill for the following reasons:

1. Section 28-2-903 MCA , as it is currently drafted, requires agreements to be in writing in a variety of instances. These instances have two things in common:

- a. The potential for unsophisticated parties
- b. A long term or serious undertaking

Now we have bankers, the most sophisticated of financial parties, wishing to invoke this protection. There is no need. They understand the consequences of a financial commitment whether it be in writing or not.

2. This area of legislation is probably preempted by federal consumer protection legislation:

a. Sections 1601 et seq of the TRUTH IN LENDING LAW allow a suit on a disclosure statement (a document not signed by the lender) and for false advertising of rates.

b. Section 5.201(1) of the CONSUMER CREDIT CODE provides a civil penalty for excess charges and 21 other violations of the codes without any requirement that instruments be in writing.

c. The HOME MORTGAGE DISCLOSURE ACT allows a claim based upon improper disclosure of terms without a requirement of written documentation signed by the parties.

d. THE FAIR DEBT COLLECTION ACT provides for civil liability for deceptive forms, unconscionable collection practices and misrepresentations

e. The EQUAL CREDIT OPPORTUNITY ACT provides for civil actions for discrimination based on race, sex, creed, color, national origin or marital status.

3. This language conflicts with the consumer protection act, Section 30-14-103 M.C.A. , which provides for civil remedies based upon unfair or deceptive business practices.

4. The proposed legislation is offensive. Bankers are asking you to allow them to engage in conduct so offensive as to constitute criminal behavior in dealing with the citizens of this state without any civil sanctions for their behavior.

Section 45-6-317 of the MONTANA CRIMINAL CODE defines the conduct of a person as criminal when he "causes another, by deception or threat, to execute a document disposing of property or a document by which a pecuniary obligation is incurred."

In the Clark case Clark owed money to the bank. It was his contention that the bank had agreed to forgive the obligation if he would convey certain property to the bank. He did, but the bank nevertheless sued him for the balance owed after sale of the

SENATE JUDICIARY

EXHIBIT NO. 5, p. 3

DATE 2-8-89

BILL NO. SB 138

properties. He counterclaimed against the bank and the jury agreed with Clark.

Now the Bankers want you to insulate them from culpability for this sort of conduct, indicating that suits similar to this are running them out of business. Who wants banks engaging in this sort of conduct in business?

SENATE JUDICIARY

EXHIBIT NO. 6

DATE 2-8-89

BILL NO. SB 255

February 7, 1989

*EX
From
Yellowtail*

Honorable Bill Yellowtail
Montana State Senate
State Capitol
Helena, Montana 59620

Dear Senator Yellowtail:

Because of the inclement weather, I was unable to travel to Helena for the recent Judiciary Committee hearing on Senate Bill 255. This letter will convey my testimony. I am sending you several copies of this letter for the other members of the Committee and am hopeful that you will be able to insert my letter in the official proceedings of the hearing.

Senate Bill 255 would allow the Montana Highway Patrol to intervene in labor disputes in the name of keeping our highways open. I am opposed to this legislation, and as a member of the United Mine Workers, I would like to tell you of an incident which illustrates the flaws of this bill. During the labor dispute two years ago between Peabody Coal Company and the United Mine Workers, our resident highway patrolman became personally involved in the strike situation. This patrolman had a business interest in partnership with the mine superintendent. There were questions of harassment and intimidation of the striking workers by the patrolman at the time. His personal involvement extended to offering his home to house strike breakers. Senate Bill 255 could subject workers around the state to similar problems. While this may have been an isolated incident, the opportunity for more widespread abuses should be avoided at all costs.

I urge you to reject this legislation.

Sincerely,

Leonard Colvin

Leonard Colvin
Box 880
Forsyth, MT 59327

Amendments to Senate Bill No. 255
First Reading Copy

Requested by Senator Harp
For the Committee on Judiciary

Prepared by Greg Petesch
February 7, 1989

- insert* { 1. Page 3, line 12.
Following: "may"
Strike: remainder of line 12 through "to" on line 14
Insert: "act as a peace officer and"
- weider* { 2. Page 3, line 18.
Strike: "and"
Insert: "or"
- acicot
+ weider* { 3. Page 3, line 21.
Strike: "designee"
Insert: "designated assistant attorney general"
- weider* { Following: "who"
Strike: "shall"
Insert: "may"

(OVER)

1 boycotts."
2 **Section 3.** Section 44-1-1003, MCA, is amended to read:
3 "44-1-1003. Offenses on highways, rest areas, and
4 state highway properties adjacent to the highway or
5 involving motor vehicles. (1) Patrolmen are considered
6 police officers for the purpose of making arrests for all
7 offenses occurring on the highways, highway rest areas,
8 state highway properties adjacent to the highway, or
9 involving the use of motor vehicles or the registration
10 thereof of motor vehicles and for the purpose of serving
11 warrants of arrest in connection with such the violations.

12 (2) Patrolmen may ~~take any action appropriate, either~~
13 ~~alone or in cooperation with other peace officers, to keep~~
14 ~~the public peace and to~~ act as a peace officer and
15 maintain the safe, free flow of
16 traffic on the public highway if:

17 (a) there is an obstruction of the public highway
18 rendering vehicular traffic impassable as prohibited under
19 45-8-101; ~~and~~ or

20 (b) a request for assistance, provided for in
21 44-1-1001, is made directly to the attorney general or his
22 designee, who ~~shall~~ may promptly authorize the highway patrol
23 chief and patrolmen to take action necessary to assure the
24 safe and prompt passage of the public on the highway."

25 **NEW SECTION. Section 4.** Extension of authority. Any
existing authority to make rules on the subject of the

-End-

Amendments to House Bill No. 123
Third Reading Copy (BLUE)

Requested by Senators Bishop and Mazurek
For the Committee on Judiciary

Prepared by Valencia Lane
February 7, 1989

1. Page 2, lines 1 through 21.

Strike: section 4 in its entirety

Insert: "NEW SECTION. Section 4. Notice of filing. (1) At the time of the filing of the foreign judgment, the judgment creditor or his attorney shall file with the clerk of the court an affidavit setting forth the name and last-known post office address of the judgment debtor and the judgment creditor. The affidavit must also include a statement that the foreign judgment is valid and enforceable, and the extent to which it has been satisfied.

(2) Promptly upon filing the foreign judgment and affidavit, the judgment creditor or someone on his behalf shall mail notice of the filing of the judgment and affidavit, attaching a copy of each to the notice, to the judgment debtor and to his attorney of record, if any, each at his last-known address by certified mail, return receipt requested. The notice shall include the name and post office address of the judgment creditor and the judgment creditor's attorney, if any, in this state. The judgment creditor shall file with the clerk of the court an affidavit setting forth the date upon which the notice was mailed.

(3) The proceeds of an execution shall not be distributed to the judgment creditor earlier than 30 days after the date of mailing the notice of filing."

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 2-8-89 Senate Bill No. 138 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	✓	

9 to 1

Rosemary Jacoby
Secretary

Sen. Bruce Crippen
Chairman

Motion: Amend Passed 9 to 1

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 2-8-89 Senate Bill No. 138 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	✓	

Rosemary Jacoby
Secretary

Sen. Bruce Crippen
Chairman

Motion: Yellowtail - Tabled - Failed

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 2-8-89 Senate Bill No. 138 Time 11:15 #3

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

Passed 5 to 4

Rosemary Jacoby
Secretary

Sen. Bruce Crippen
Chairman

Motion: Beck DPA Passed 5 to 4

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 2-8-89 Senate Bill No. 255 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		

Rosemary Jacoby
Secretary

Sen. Bruce Crippen
Chairman

Motion: Harp - Amendment Unanimous
Harp amending of amendment: Strike "as a peace officer"
Unanimous

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 2-8-89 Senate Bill No. 255 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		✓

Passed 8 to 2

Rosemary Jacoby
Secretary

Sen. Bruce Crippen
Chairman

Motion: Yellowtail - remove "or", delete 2 8 to 2

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 2-8-89 Senate Bill No. 255 Time 11:35 #3

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

Rosemary Jacoby _____
Secretary

Sen. Bruce Crippen _____
Chairman

Motion: Harp - De Passas Amended Passed 6 to 4

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 2-8-89 House ~~Senate~~ Bill No. 123 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		

Rosemary Jacoby
Secretary

Sen. Bruce Crippen
Chairman

Motion: Bishop Moved Amendments UNAN
May DPA UNAN

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 2-8-89 Senate Bill No. 312 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	✓	

9 to 1

Rosemary Jacoby
Secretary

Sen. Bruce Crippen
Chairman

Motion: Harp - p. 2 line 1, following "of", strike
(Amending bill to make it exactly like (I 30))

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 2-8-89 Senate Bill No. 312 #2
Time _____

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

Passed 7 to 3

Rosemary Jacoby
Secretary

Sen. Bruce Crippen
Chairman

Motion: ^{MS} Mazurek - Amend: p. 2, lines 13 & 14, after "damages", strike "actual economic loss for bodily injury", saying you could recover more than \$250,000; it would take a 2/3 vote of both Houses.

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 2-8-89 Senate Bill No. 312 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	✓	

6 to 4

Rosemary Jacoby
Secretary

Sen. Bruce Crippen
Chairman

Motion: Pinoneault - Do Pass as amended Passed 6 to 4

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

1

Date 2-8-89 Senate Bill No. 314 Time 12 noon

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

9. to 1

Rosemary Jacoby
Secretary

Sen. Bruce Crippen
Chairman

Motion: Brown Moved To Pass/Passed 9 to 1