

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bruce Crippen, on February 10,
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. Pineseault
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 358

Presentation and Opening Statement by Sponsor: Senator Bob
Williams of Hobson, District 15, opened the hearing.
He said the bill was an act granting an unsuccessful
bidder on a public contract the right to challenge the
award in district court. If the court finds that the
contract was not let to the lowest bidder whose bid was
within the established specifications, the court shall
invalidate that award to begin the bidding process
again, he said. He reviewed the bill.

List of Testifying Proponents and What Group they Represent:

John Christianson, Attorney from Stanford
H. S. Hansen, Montana Technical Council

List of Testifying Opponents and What Group They Represent:

None

Testimony:

John Christianson said he represented a number of contractors in his practice and had requested that the bill be drafted to correct an inequity in the bidding system in Montana. He said that, in reading the statutes, they seemed unequivocally clear. If county commissioners or school boards decide not to accept the lowest bidder, it seems most unfair to the lowest bidders. But, research shows that the bidding statutes were designed originally as interpreted by the Montana Supreme Court to protect taxpayers, which was the fundamental policy of accepting the lowest bid. Pursuant to case law, a disgruntled contractor has no standing to overturn the granting of the bid to the higher bidder. Statute creates a great amount of discretion for determining who is the lowest, most responsible bidder. One case in Billings was the awarding of a bid on the grounds that a 40,000 lb. road grader looked "more nimble" than a competitive one. He felt there should at least be standing for the low bidder to bring the case before a judge.

H. S. Hansen said he represented an association of architects and engineers. They supported the concept but was concerned about some parts of the bill. He said he was concerned about "irregularities" which might occur i.e. a contractor may not sign a bid bond. Would this allow the discretion to disqualify the lowest bid and give it to the next bidder he asked. He felt that portion should be amended.

He said that on p. 2, lines 14 and 15 he had some questions regarding the "same specifications contained in the original request for bids." Most suppliers and contractors require that, if rebidding must occur, plans and specs be changed. He felt that portion should be addressed with an amendment.

Questions From Committee Members: Senator Pinsoneault said that, as school board chairman, he was familiar with the awarding of bids process. In a situation where there might be 5 bidders, the board first studies the reputation of all of the bidders. If this bill is passed, he wondered if it wouldn't take away the discretion needed in that determination. Mr. Christianson said he didn't think that would be affected. He said the case of Sletten versus Great Falls reaffirmed the broad discretion that city

councils have in determining who is the lowest responsible bidder for definition of "responsible" and "qualifying," as opposed to the "low-dollar amount." This, he commented, just allows the low bidder to come to have standing to protest in court. Present law, he said, was at the far extreme. It allows bids to be awarded to a local bidder, even though it may be several thousand dollars higher. He said it is a travesty in the bidding process.

Senator Pinsoneault asked if there wouldn't be an evidentiary problem. It could be considered heresay. Mr. Christianson said sure, but then all elected officials should be able to sustain their decisions if it becomes necessary.

Senator Halligan asked about the prospective procedures or fraud in the bidding process. Mr. Christianson said this bill intends to take care of just the one issue of giving a disgruntled low bidder a standing to contest the award in court. At present, if he is not a taxpayer in a particular county, he has no redress in that county's court system, according to Mr. Christianson.

Senator Mazurek asked if the League of Cities and Towns had been consulted on the bill. Senator Williams said they knew what went on in this area and were aware of the bill. He felt that they would be present if they were concerned with the bill.

Senator Mazurek asked if the Purchasing Division for the state had reviewed the bill. Earl Fred of that department said they had and had no position on it, with the exception of the last section in the bill regarding the specifications. The Purchasing Division did not agree with that, he said, and did agree with Mr. Hansen's comments.

Closing by Sponsor: Senator Williams said he had taken a bid on a school roof. He works with a contractor who does work for the federal, state, city, county and private work and was bonded. He drove 250 miles to study a proposed high school construction, came \$5,000 lower than the top bid and had it thrown out because the bidder was not local. It was rebid and was still awarded to the same contractor, who had added \$4,000 to the bid -- making that bid \$8,600 higher than his bid. He said he would be willing to work on any proposed amendment. He closed the hearing.

HEARING ON SENATE BILL 333

Presentation and Opening Statement by Sponsor: Senator Joe Mazurek of Helena, District 23, opened the hearing which is a general revision of the trust laws in Montana, he said. He said the bill was similar to the one presented by Senator Van Valkenburg to the committee regarding criminal procedure. The State Bar of Montana Tax and Probate Section had worked for two years on the antiquated code to bring it up to date and make it more consistent. The Tax and Probate Section has approved all the changes recommended by the subcommittee. He said the law had been drafted by the Law School under the direction of Ed Eck, who has excellent credentials for doing so.

List of Testifying Proponents and What Group they Represent:

Ed Eck, UM Law School Professor
Walter Murfitt, Helena Attorney
Dan McLane, Billings Attorney
Howard Vralstead, Montana Bankers Association, Trust Dept.
Jim Johnson Kalispell Attorney
Kathleen Magone, UM Research Assistant, UM Law School, herself

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Ed Eck presented written testimony to the committee. (See Exhibit 1.)

Walter Murfitt said that most of his practice was devoted to working with the trust code. He said that some of the antiquated codes have been expensive for some of his clients. He felt this bill would be good for the clients, lawyers and administrators of trusts. He heartily endorsed the bill.

Dan McLane said he was currently the chairman of the Tax and Probate Section, so he inherited the project after it had been ongoing for about 3 years. The bill had been reviewed by many lawyers in the state and, while it may not be a

perfect bill, he thought it was a very good one. He urged favorable consideration.

Howard Vralstead said his group, comprised of virtually all the trust officers in the state, wholeheartedly endorsed the bill.

Jim Johnson said he had worked on the committee which studied the bill for 3 years. It is not just a compendium of other states statutes, but was gone over thoroughly by trust officers in the banking industry and by lawyers on both sides. He said the bill was largely from the California code, but also included statute from other states. He said the bill was drawn up from proposals that were considered to be the best for the state.

Kathleen Magone said she was a third year law student who had worked on the project for the past year and a half. She heartily endorsed the legislation.

Questions From Committee Members: Senator Halligan asked about trusts drawn up by "fly-by-night" companies. How would this law address that issue, he asked. Mr. Eck said there had been a company in Missoula selling trusts without the benefit of any professional assistance. The bill does not address that specifically, he said, but does have a unique provision. If the trust instrument does not have a clause indicating that it's revocable, then it's irrevocable. This bill reverses that, to avoid the trap of the unwary who may not know what he or she is doing.

Jim Johnson said that Kalispell had experienced the same situation. People who are unauthorized and not expert in the field are giving advice in the area of trusts. He knew that there was an effort by the State Bar to address the issue, but didn't think this kind of legislation could do that.

Senator Pinsonault asked Senator Mazurek about the bill he had proposed about trusts. Senator Mazurek said it was being worked on and that he had spoken to Mr. Eck about the bill. That bill, said Senator Mazurek, may be tabled in the House.

Closing by Sponsor: Senator Mazurek thanked the people who appeared in the hearing. He said this sort of revision had taken a great deal of time by experts in the field.

For that reason, he felt the bill should be accepted by the committee.

DISPOSITION OF SENATE BILL 333

Discussion: Valencia Lane said there was an amendment correcting some typographical errors.

Amendments and Votes: Senator Mazurek MOVED to amend the bill as suggested by the Law School (Exhibit 2). The MOTION CARRIED UNANIMOUSLY.

Recommendation and Vote: Senator MAZUREK MOVED that Senate Bill 333 DO PASS AS AMENDED. The MOTION CARRIED UNANIMOUSLY.

HEARING ON SENATE BILL 131

Presentation and Opening Statement by Sponsor: Senator Mazurek of Helena, District 23, said this bill was worked on by the same committee and was to generally revise the uniform statutory rule against perpetuities to overturn some of the inequities in the law for the unsuspecting.

List of Testifying Proponents and What Group they Represent:

Ed Eck, U. M. Law School Professor

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Ed Eck presented written testimony to the committee. (See Exhibit 3)

Questions From Committee Members: None

Closing by Sponsor: Senator Mazurek said he concurred with the amendments proposed by Ed Eck and closed the hearing.

DISPOSITION OF SENATE BILL 131

Amendments and Votes: Senator Mazurek MOVED the amendments (Exhibit 4). The MOTION CARRIED UNANIMOUSLY.

Recommendation and Vote: Senator Mazurek MOVED that Senate Bill 131 DO PASS AS AMENDED. The MOTION CARRIED UNANIMOUSLY.

HEARING ON SENATE BILL 331

Presentation and Opening Statement by Sponsor: Senator Al Bishop of Billings, District 46, opened the hearing said his bill was an act to generally revise the uniform probate code and related law. He said he had been practicing law since 1952, before the probate code was enacted in 1974. His practice was basically in the probate field. He said before 1974, probate codes were difficult. In 1974, his law partner, Bob Hendrickson worked on a committee to draw up the law. He said there was a lot of resistance to the code because of fear of the unknown, especially how it would affect the attorneys' fees. But it resulted in simplification, made the process easier with no cost to the lawyers. The uniform probate code made it difficult for a lawyer to make a major mistake, he said. He distributed an amendment to committee members (Exhibit 5) and asked the committee to study it. He said the revision of the code came from amendments made by the uniform commissioners in 1987 from the national probate code and from Professor Eck's experience.

List of Testifying Proponents and What Group they Represent:

Ed Eck, UM Law School Professor
Dan McLane, Chairman of the Tax Probate Section

List of Testifying Opponents and What Group They Represent:

Walter Murfitt, Helena Attorney

Testimony:

Professor Eck presented written testimony to the committee (see Exhibit 6). He said there were three sources of amendment: The National Probate Code, lawyers and the law school. It was endorsed by the Tax and Probate Section Commissioners and the State Bar, he said.

He said, in speaking to the amendment, that it relates to the Uniform Transfers to Minors Act (UTMA) which was adopted in 1985. It could be referred to as a "poor man's trust" because a person can make transfers without having to go to the expense of setting up a trust document or having the administration of a trustee. A transfer of an asset is simply done by entitling it under the Uniform Transfers to Minors Act or making a provision as such in a will. One of the advantages was the age of transfer was 21. Unfortunately, the definition section of the UTMA was that the age of 18 had been used. This made for problems, he said, as there might be beneficiaries both over and under that age. The amendment would take care of that age difficulty. When the bill was originally requested, the section was included. However, the Legislative Council dropped the section because of a constitutional concern, he stated, namely Section 14, Article II of the Montana Constitution which reads that a person of 18 or over is an adult for all purposes.

Professor Eck said he did not share that constitutionality concern for the following reasons: 1. UTMA doesn't affect a minors rights in any way. However, the donor may or may not attach strings to the transfer. 2. The term minor is just a shorthand way of referring to a young person. 3. There are only two opinions advocated under the constitutional provision dealing with the majority age of 18, neither dealing with the UTMA -- one is an Attorney General's opinion and one is by the Supreme Court, he stated. The Attorney General's related to criminal law and after-care for minors who have been found guilty of crimes and after-care at the ages of 18, 19 or 20. The AG said yes, they could provide that care. The opinion said the constitution does not give adults new rights, nor does it preclude state classifications based on age. The Supreme Court opinion related to child support. A lower court opinion said that child support shall continue until further order of the court. The Montana Constitution was adopted and the question arose regarding the age for the continuance of child support.

Dan McLane referred to a letter that a Mr. Whitworth of Missoula had written Senator Halligan regarding the code amendment. He said that some members of the Tax Probate Council still had some concerns about individual items, but he urged the committee's adoption

of the bill. He suggested that the committee could address the statute of limitations in the bill.

Walter Murfitt appeared as an opponent of only one section (Section 5) of the bill, pertaining to who may witness a will. Lawyers previously felt that beneficiaries to a will should not be witnesses to it, so that limitation was included in the act. The saving and protective clause was that, if that person had also received a share and the individual had died in testate, that they could receive at least up to that share and the will would not be invalidated. There was good reason for that then and there is now, he said. Elderly persons may be unduly influenced by a close relative or friend. Section 5, he felt would promote litigation in will contests. He said by eliminating it, there would still be an opportunity to contest a will on the basis of fraud or influence.

Questions From Committee Members: Senator Pinsoneault asked if there should be any concern on the effective date as far as wills that are now being processed. Senator Eck said no, because the bill tended to liberalize validity if anything.

Senator Mazurek asked for comments on Mr. Murfitt's concerns. Professor Eck said the committee would have to balance a policy issue and decide on that for themselves. He said that the National UPC does not have those provisions. If Section 5 was adopted, he stated, Montana would be in conformance with National Uniform Probate Code. The drafters of that code would argue against Mr. Murfitt and he read from their report, which said the rare and innocent use of an interested bystander would no longer be penalized.

Senator Halligan said he didn't understand sub 2 of page 6, Section 4 (b). Professor Eck said that sub (b) is say that, the spouse is only going to get a third in one of three circumstances: 1. Where there are 2 children, 2. Where there is issue of 2 children, or 3. Where there 1 or more children and the issue of 1 or more children. It could apply when there are 2 family lines, he said, some living and some dead.

Senator Mazurek asked about a Louisiana decision that had been struck down along the same subject as the bill. He commented that there had been no effort to address the issue and wondered about discussion by the committee who drafted the bill. Professor Eck said it had been discussed. The committee had been in contact with the National Uniform

Commissioners regarding it. They (the national commissioners) were in disagreement as to whether or not the UPC provision on Notice to Creditors provision was akin to the Louisiana provision. Because of that uncertainty, the National UPC Commissioners had not proposed an amendment as yet. The Montana committee felt it would be best to wait for the national commissioners to come up with a code and then adopt that, he said.

Senator Mazurek asked if this law could cause any problems. Mr. McLane felt that Montana would be safe in acting in the manner of the bill at this time. He did, however, feel that we needed to address the issue of creditors. Usually, no problem occurs, he said, because the attorney makes an effort to find the creditors - credit card companies etc. Hospitals, he added, are always diligent about submitting bills, he said.

Senator Jenkins referred to Section 1, saying adopted children have been removed from that section. He wondered if they were covered under Section 3. Professor Eck said yes. This revision in the family law section in Title 70 had a rule different than the rule in the probate code. The probate basically says, if you are an adopted child, you are treated as a natural child. The adopted child has the same relationship as a natural child with only one exception -- a case where there is an adoption by the spouse of a natural parent. In that case, the child can still inherit from his natural father, as well as from his adopted father. The difference is in Title 40. The exception wasn't there, he said. The stricken language is to lead to Title 72. The committee felt that Title 40 had no business talking about heirs and wanted Title 72 take care of it, he stated.

Closing by Sponsor: Senator Bishop thanked Professor Eck and others for appearing. He said he understood Mr. Murfitt's concern. He said he had never used an interested party as a witness, but felt there were times when it would have been convenient. He felt, however, that most beneficiaries would prefer not to act as witnesses. He urged the committee's support.

Note: Amendments drafted by Valencia Lane for SB 331 were distributed to the committee (Exhibit 7). They were announced to be the same as those proposed by Senator Bishop, but were technically correct, written in the proper form.

DISCUSSION OF PENDING BILLS

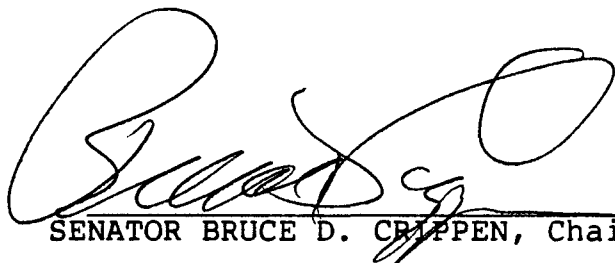
SENATE BILL 344: Valencia Lane distributed amendments requested by Senator Harp. (See Exhibit 8) Valencia said the amendments proposed staggered terms. The concern, she said, was that Governor Schwinden had appointed 4 new members on Jan. 1, 1988, which means that Governor cannot appoint any new members until 1992. What they wanted to do to correct that, she told the committee, was to stagger the terms to 1991, 1992, 1993 then 4 years thereafter. Each succeeding governor would have staggered terms to deal with after that. Greg Petesch felt that would cause no problem, she said. Senator Crippen requested that the amendments be studied and that action on the bill be postponed until the meeting to be held on Saturday, when all bills would have to be reported out of the committee.

SENATE BILL 338: Senator Mazurek read an amendment proposed by the Crime Victims' Compensation people regarding restitution. He thought the amendment would add a New Section 3 providing that, if someone gets paid restitution, the victim wouldn't get double payment from the state and the county.

SENATE BILL 358: Senator Pinsoneault said he had problems with the bill and asked for a postponement until the executive session on Saturday morning.

ADJOURNMENT

Adjournment At: 11:45 a.m.



SENATOR BRUCE D. CRIPPEN, Chairman

BDC/rj

minrj.210

ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date 2-10-89

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

February 10, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration SB 333 (first reading copy -- white), respectfully report that SB 333 be amended and as so amended do pass:

1. Page 22, line 5.
Following: "circumstances"
Strike: "occur"
Insert: "occurs"

2. Page 57, line 18.
Following: "section"
Strike: "144"
Insert: "143"

3. Page 57, line 20.
Strike: "145"
Insert: "144"

4. Page 70, line 4.
Strike: "deprecation"
Insert: "depreciation"

AND AS AMENDED DO PASS

Signed: _____
Bruce D. Crippen, Chairman

Handwritten:
J.C.
2/10/89
2:45 p.m.

SENATE STANDING COMMITTEE REPORT

February 10, 1989


MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration SB 131 (first reading copy -- white), respectfully report that SB 131 be amended and as so amended do pass:

1. Title, line 7.
Following: "THROUGH"
Strike: "70-1-410"
Insert: "70-1-418"

2. Page 7, line 3.
Following: "through"
Strike: "70-1-410"
Insert: "70-1-418"

AND AS AMENDED DO PASS

Signed: 
Bruce D. Clippé, Chairman

N.C.
2/10/89
2:45
P.M.

Ed Eck

SENATE JUDICIARY

EXHIBIT NO. 1 part PS1

DATE 2-10-89

BILL NO. 59 333

TRUST LAW REVISION BILL

Mr. Chairman and Senators, thank you for the opportunity to appear before you and speak in favor of Senate Bill No. 333. My name is Ed Eck, and I'm a professor at the University of Montana School of Law where I teach estate planning, federal estate and gift taxation, wills, trusts, and related courses.

Senate Bill No. 333 is the product of 3 years of work of a group of 12 Montana lawyers and 4 Montana trust officers of three trust companies which do business in Montana. I would like to give recognition to those individuals who have actively participated in approximately 15 full-days meetings on the project, in addition to the research time they have spent on the project. Some of those members are present:

- Harry Haines - Missoula ✓
- George Goodrich - Missoula
- Jim Johnson - Kalispell ✓
- Howdy Murfitt - Helena ✓
- Don Hamilton - Great Falls
- Steve Potts - Great Falls ✓
- Bob Drummond - Great Falls
- Angus Fulton - Billings
- Robert Michelotti - Billings
- Pete Stanley - Billings
- Stuart Lewin - Boulder

Additionally, and just as importantly, the trust officers who have been equally active members of the committee include:

Howard Vralsted - who co-chaired the committee with me
 Jean Edwards
 David Servies
 Dave Haft

Per Sect

All of the trust officers are from Billings (except Jean Edwards who recently moved). This bill has been endorsed by the Montana Bankers Association. Additionally, it has been endorsed by the Tax Section of the Montana Bar Association. I am uncertain whether Jim Thompson who chairs the legislative activities of the Tax Section is here today. I believe that the overall chairman of the Tax & Probate Section, Dan McLean, is here today.

Most of the research on the bill has been conducted by me or students at the University of Montana School of Law. Over the past three years, over 10 students have been involved in the project in one ^{way} ~~what~~ or another. My current research assistant, Kathleen Magone, is here today as well. Funding for this student research has been provided by the State Bar Association, the Montana Bankers Association, and most fittingly the ¹² George and Laurine Harris Charitable Trust.

History of Project. As noted, this joint committee was formed in 1986 when Great Falls lawyer Greg Schwandt, then president of the Tax Section of the State Bar Association, saw a real need for trust law reform. I was appointed to chair the committee. For the first several months, law students compiled the statutes from a dozen states, the Uniform Probate, the Uniform Trust Acts and an variety of other sources. The result was a 350-page book where statutes from various states on the

same topic were placed side-by-side for ease the comparison.

Committee meetings began in earnest in 1987 where the merits of various statutes were debated and the results of my research and drafting was critically reviewed. The last of those meetings occurred in November of last year.

Content. I recognize that time does not permit a section-by-section analysis of such a comprehensive act. However, I would like to briefly list 5 reasons why this bill is superior to our existing trust provisions.

1. Elimination of inconsistencies. Our existing statutes actually contain some inconsistent provisions. The history of Montana's trust statutes offers us an explanation. Most of these statutes were adopted in 1895, when we borrowed trust provisions from California. California had previously borrowed statutes from an 1872 New York trust code, known as the Field Code.

Since then, the legislature has wisely adopted from time to time various Uniform Acts which deals with specific aspects of trust law. For example, in 1974, the Uniform Trustee's powers act was adopted. This is a through piece of legislation which deals solely with the powers of trustees.

Unfortunately, when the Uniform Trustees Powers Act was adopted, no one apparently advised the Legislature that there were some inconsistent statutes on the books. One example is a New York code provision which requires that when there are 3 or more trustees of the same trust, all must agree on any action. However under the Uniform Trustee Powers Act, a majority can bind the trust.

This bill eliminates those inconsistencies. In fact, one of the most important provisions of this bill is its repealer provisions. This bill does not just add another layer of good law on top of existing law. Most all of the existing trust provisions are simply repealed.

2. The proposed trust code eliminates antiquated statutes.

A number of existing Montana provisions simply are still in this 1872 New York state "English." Further, some of the provisions state a principle of law that most courts in other states have long since rejected. On the other hand, this bill attempts to eliminate both antiquated language and provisions of law.

3. The proposed code is better organized.

Under this proposal, all of the statutes which deal with trusts are in one place, rather than scatted around various chapters of law.

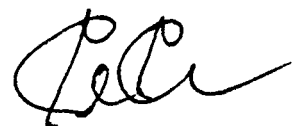
4. The proposed code eliminates procedural dissimilarities.

Under existing law, there are 14-day notice periods and 25-day notice periods and different rules for publishing notices in newspapers. The proposed Code simply sets a 14-day notice period on all proceedings concerning trusts.

5. The proposed Trust Code is comprehensive.

Montana currently does not have any express provisions for the combination of similar trusts and for the division of a trust. Further, Montana does not have any provisions which deal with the termination of trusts with uneconomically low principal. Montana doesn't have provisions dealing with the transfer of trust situs into this state.

This proposed code deals with all of these issues and more.



Professor E. Edwin Eck
University of Montana
School of Law

Rationale in Support of S.B. 333

Montana adopted a large part of its trust statutes from California in 1895. These California statutes in turn represent an 1872 version of the Field Code from the state of New York. For the most part, the Montana legislature has not amended these statutes during the 94 years since their adoption.

Additionally, the legislature has adopted various uniform acts which form another body of law to be read in conjunction with the Field Code. While those acts (see, for example, the Montana Uniform Trustees' Powers Act and the Revised Uniform Principal and Income Act) are excellent, provisions which are inconsistent still exist in the Field Code. Other inconsistencies are replete within the current trust law.

Much of Montana trust law is antiquated, especially that from the Field Code. For the most part, this antiquity is a matter of terminology. The Field Code simply does not use twentieth century English. Further, occasionally a current Montana trust statute takes a position contrary to modern trust law.

A simple listing of the chapters of Title 72 Mont. Code Ann. provides the reader with a good clue that our existing statutes are disorganized. Chapter 20 is entitled "Trusts in General" and Chapter 31 is entitled "Miscellaneous Provisions Relating to Fiduciaries." Between those chapters are located most of the provisions relating to trust law. Also sandwiched between chapters 20 and 31 are chapters which simply are not components of trust law, including the Uniform Transfers to Minors Act, codified as chapter 26, and chapter 30, dealing with the management of institutional endowment funds.

The current Montana trust statutes have not taken advantage of the work of the first or second Restatement of Trusts or of other jurisdictions' statutes. The proposed trust code codifies most of the relevant rules relating to modern trusts, making the law more accessible and understandable to the courts, lawyers, and other interested persons.

Many of the Montana statutes relating to trust law include different procedural provisions that are unnecessarily dissimilar. The proposed code unifies procedural rules.

The draft is well-organized, simplified, and comprehensive, and should serve Montana well into the 21st century. It eliminates inconsistencies and antiquated terms, clarifies administration, and is specific yet succinct. We urge your support of S.B. 333.

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To a great extent, this draft relies upon some 1986 comprehensive California legislation on these issues. However, committee members did not want to blindly follow another state. More than occasionally, a statute was borrowed from yet another state or from a current law review article on the topic.

Conclusion

In a nutshell, I think the people of Montana will benefit by the enactment of this bill. The bill will help people who wish to create trusts and people who are beneficiaries of trusts. If you have any specific questions about this bill, I and my colleagues would be glad to entertain them. Obviously, this is a comprehensive bill. If we don't know the answer to a specific question, we'll be glad to get back to you in writing.

Questions?

Again, thank you for your consideration.

Professor E. Edwin Eck
University of Montana
School of Law

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Passed

Amendments to Senate Bill No. 333
First Reading Copy (WHITE)

Requested by Law School
For the Committee on Judiciary

Prepared by Valencia Lane
February 9, 1989

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Insert: "depreciation"

E. Edwin Eck
University of Montana
School of law

UNIFORM STATUTORY RULE AGAINST PERPETUITIES
Senate Bill No. 131

English Common Law Rule: "No interest is good unless it must vest, if at all, not later than 21 years after some life in being at the creation of the interest."

Purpose: Prevent property from being tied up for too long a time in trusts.

Example 1. A will has a clause which reads: "To those of my issue alive when the probate of my estate is complete."

Example 2. A trust reads: "Income to my aged Aunt Mabel for her lifetime, then income to Mabel's children, and upon the death of the surviving child, the trust is to terminate and the trust be distributed equally to Mabel's then living grandchildren." Mabel is 80 years of age and has two children in their 50's.

Both examples have provisions which violate the traditional English common law rule because of some very remote contingencies.

Criticisms:

1. Traditional English common law rule voids certain interests in property because of very remote possibilities.

2. Traditional English common law rule is very complex in its application. Even many professionals cannot apply the rule successfully.

Professor Gray:

"There are few lawyers of any practice in drawing wills. . . who have not at some time either fallen into the net which the rule [against perpetuities] spreads for the unwary, or at least shuddered to think how narrowly they have escaped it."¹

Professor Leach described the rule as a "technicality-ridden legal nightmare" and a "dangerous instrumentality in the hands of

1. Gray, The Rule Against Perpetuities p. xi (4th ed. 1942).

most members of the bar."²

Solution: Uniform Statutory Rule Against Perpetuities

1. Is the interest valid under the traditional English common law rule? If so, the interest is still valid.

2. If the interest is not valid under the traditional English common law rule, wait and see if valid within 90 year waiting period.

3. In the rare circumstance that the interest is still not valid, the district court can reform the disposition in a manner that most closely approximates the transferor's intention.

Amendment: Repeal the related rule on accumulation of trust income and the rule against undue suspension of the power of alienation.

2. Leach, Perpetuities Legislation 67 Harv. L.Rev. 1349 (1954).

SENATE JUDICIARY
EXHIBIT NO. 4
DATE 2-10-89
BILL NO. SB131

Nation

Amendments to Senate Bill No. 131
First Reading Copy (WHITE)

Requested by Senator Mazurek (and Prof. Ed Eck)
For the Committee on Judiciary

Prepared by Valencia Lane
February 9, 1989

1. Title, line 7.
Following: "THROUGH"
Strike: "70-1-410"
Insert: "70-1-418"

2. Page 7, line 3.
Following: "through"
Strike: "70-1-410"
Insert: "70-1-418"

Proposed Amendments to Senate Bill 331 (Introduced bill - white copy)

*Bishop's - same as
Valencias
SB 033101. avl*

1. Title, line 11.
Following: "72-16-303,"
Strike: "AND"
2. Title, line 12.
Following: "72-16-906,"
Insert: "AND 72-26-502,"
3. Page 37.
Following: line 17
Insert: "Section 29. Section 72-26-502 is amended to read:
72-26-502. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:
 - (1) "Adult" means an individual who has attained the age of ±8 21 years.
 - (2) "Benefit plan" means an employer's plan for the benefit of an employee or partner.
 - (3) "Broker" means a person lawfully engaged in the business of effecting transactions in securities or commodities for the person's own account or for the account of others.
 - (4) "Conservator" means a person appointed or qualified by a court to act as general, limited, or temporary guardian of a minor's property or a person legally authorized to perform substantially the same functions.
 - (5) "Court" means district court.
 - (6) "Custodial property" means
 - (a) any interest in property transferred to a custodian under this chapter; and
 - (b) the income from and proceeds of that interest in property.
 - (7) "Custodian" means a person so designated under 72-26-603 or a successor or substitute custodian designated under 72-26-801.
 - (8) "Financial institution" means a bank, trust company, savings institution, or credit union chartered and supervised under state or federal law.
 - (9) "Legal representative" means an individual's personal representative or conservator.
 - (10) "Member of the minor's family" means the minor's parent, stepparent, spouse, grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by adoption.
 - (11) "Minor" means an individual who has not attained the age of ±8 21 years.
 - (12) "Person" means an individual, corporation, organization, or other legal entity.
 - (13) "Personal representative" means an executor, administrator, successor personal representative, or special administrator of a decedent's estate or a person legally authorized to perform substantially the same functions.
 - (14) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rice, and any territory or possession subject to the legislative authority of

the United States.

(15) "Transfer" means a transaction that creates custodial property under 72-26-603.

(16) "Transferor" means a person who makes a transfer under this chapter.

(17) "Trust company" means a financial institution, corporation, or other legal entity authorized to exercise general trust powers.

Renumber: subsequent sections

Submitted by Professor Ed Eck

E. Edwin Eck
University of Montana
School of law

AN ACT TO GENERALLY REVISE THE UNIFORM PROBATE CODE
AND RELATED LAW
Senate Bill No. 331

Sources:

1. Amendments made by the Uniform Commissioners to the Uniform Probate Code in 1987.
2. The national Uniform Probate Code.
3. A few of the changes are the result of my teaching estate planning at the Law School.

Endorsement:

Unanimously endorsed by the Tax & Probate Section of the State Bar Association.

Amendment:

Modify the Montana Uniform Transfers to Minors Act (UTMA) to permit the creation of custodianships for beneficiaries aged 18, 19, and 20.

Advantages:

1. Donors (often parents) prefer that assets be managed for the benefit of the young person as long as possible.
2. A return to the national Uniform Transfers to Minors Act.

Amendments to Senate Bill No. 331
First Reading Copy (WHITE)

Requested by Professor Ed Eck
For the Committee on Judiciary

Prepared by Valencia Lane
February 9, 1989

(same as Bushape)

1. Title, line 11.
Following: "72-16-303,"
Strike: "AND"

2. Title, line 12.
Following: "72-16-906,"
Insert: "AND 72-26-502,"

3. Page 37, line 18.
Following: line 17
Insert: "Section 29. Section 72-26-502, MCA, is amended to read:
"72-26-502. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:
(1) "Adult" means an individual who has attained the age of ~~18~~ 21 years.
(2) "Benefit plan" means an employer's plan for the benefit of an employee or partner.
(3) "Broker" means a person lawfully engaged in the business of effecting transactions in securities or commodities for the person's own account or for the account of others.
(4) "Conservator" means a person appointed or qualified by a court to act as general, limited, or temporary guardian of a minor's property or a person legally authorized to perform substantially the same functions.
(5) "Court" means district court.
(6) "Custodial property" means:
(a) any interest in property transferred to a custodian under this chapter; and
(b) the income from and proceeds of that interest in property.
(7) "Custodian" means a person so designated under 72-26-603 or a successor or substitute custodian designated under 72-26-801.
(8) "Financial institution" means a bank, trust company, savings institution, or credit union chartered and supervised under state or federal law.
(9) "Legal representative" means an individual's personal representative or conservator.
(10) "Member of the minor's family" means the minor's parent, stepparent, spouse, grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by adoption.
(11) "Minor" means an individual who has not attained the age of ~~18~~ 21 years.
(12) "Person" means an individual, corporation, organization,

or other legal entity.

(13) "Personal representative" means an executor, administrator, successor personal representative, or special administrator of a decedent's estate or a person legally authorized to perform substantially the same functions.

(14) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

(15) "Transfer" means a transaction that creates custodial property under 72-26-603.

(16) "Transferor" means a person who makes a transfer under this chapter.

(17) "Trust company" means a financial institution, corporation, or other legal entity authorized to exercise general trust powers."

Renumber: subsequent sections

Amendments to Senate Bill No. 344
First Reading Copy (WHITE)

Requested by Senator Harp
For the Committee on Judiciary

Prepared by Valencia Lane
February 9, 1989

1. Title, line 5.

Following: "TO"

Strike: "PROVIDE THAT"

Insert: "STAGGER THE TERMS OF"

2. Title, line 7.

Following: first "GOVERNOR"

Strike: "SERVE AT THE PLEASURE OF THE GOVERNOR"

3. Page 1, line 24.

Following: "(3)"

Strike: "On and after"

Insert: "Within 30 days of"

4. Page 1, line 25 through page 2, line 1.

Following: "appoint" on line 25

Strike: remainder of line 25 through "term" on page 2, line 1

5. Page 2, lines 1 through 5.

Following: "3-1-1001" on line 1

Strike: remainder of line 1 through "commission" on line 5

Insert: "for the terms provided in subsection (4)"

6. Page 2, line 6.

Following: line 5

Insert: "(4)(a) Of the four members named to the commission under subsection (3), two shall serve until January 1, 1991, and two shall serve until January 1, 1993.

(b) Thereafter, all members appointed by the governor shall serve terms of 4 years."

(OVER)

Shelley BILL, NO. 344
Harp Cooper

INTRODUCED BY HARP COOPER
BY REQUEST OF THE GOVERNOR

STAGGER THE TERMS OF

A BILL FOR AN ACT ENTITLED: "AN ACT TO ~~PROVIDE THAT~~ MEMBERS OF THE JUDICIAL NOMINATION COMMISSION APPOINTED BY THE GOVERNOR ~~SERVE AT THE PLEASURE OF THE GOVERNOR; AMENDING SECTION 3-1-1002, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."~~

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 3-1-1002, MCA, is amended to read:
"3-1-1002. Staggered terms of members. (1) All original members named to the commission shall serve until January 1, 1976. Their successors shall serve as follows:

- (a) The members appointed by the governor shall serve 4-year terms.
- (b) The attorneys appointed by the supreme court shall serve 2-year terms.
- (c) The judge elected shall serve a 2-year term.

(2) Thereafter all members appointed by the supreme court and elected by the district judges shall serve terms

of 4 years. within 30 days of

(3) ~~On and after~~ [the effective date of this act], the governor shall appoint ~~at the beginning of each~~

~~subcommittee~~ ~~be~~ four members as provided in 3-1-1001.
~~commission member appointed by the governor serves at the pleasure of the governor.~~
~~commission member appointed by him at any time and appoint a new member to the commission.~~

for the terms provided in subsection (4)

NEW SECTION. Section 2. Effective date. [This act] is

effective on passage and approval.

NEW SECTION. Section 3. Applicability. [This act]

applies to appointees of the governor who are members of the judicial nomination commission on [the effective date of this act] and to members appointed by the governor after [the effective date of this act]."

see (4) (a) (b) amend # 6



DATE 2-10-89

COMMITTEE ON Judiciary BILL NO. 358

VISITOR'S REGISTER

NAME	REPRESENTING	Check One	
		Support	Oppose
Hanson, HS	Mr. Richard Crowl	✓	

(Please leave prepared statement with Secretary)

DATE

2/10/89

COMMITTEE ON

Judiciary

BILL NO. 333

VISITOR'S REGISTER

NAME	REPRESENTING	Check One	
		Support	Oppose
John Lee	State Bar	✓	
William Magone	self	✓	
Jusaid Valstad	NANT. Bankers Assn - TRUST DIR	✓	
Robert J. ...	N.Y. Bankers Assn, Trust Dir	✓	
James W. ...	State Bar; Trust Code Comm	✓	
Tom T. Pety	" " " " "	✓	
Henry H. ...	" " " " "	✓	
Burt A. ...	" " " " "	✓	
Daniel N. McLean	State Bar Tax and Arbitration Council	✓	
John Lee	self	✓	

(Please leave prepared statement with Secretary)

DATE 2-10-89

COMMITTEE ON Judiciary BILL NO. 331

VISITOR'S REGISTER

NAME	REPRESENTING	Check One	
		Support	Oppose
Kathleen Mrozyn	self	<input checked="checked" type="checkbox"/>	<input type="checkbox"/>
Walter A. Duffett	self	<input type="checkbox"/>	<input checked="checked" type="checkbox"/>
James N. McLeod	State Bar Trial & Probate Section	<input checked="checked" type="checkbox"/>	<input type="checkbox"/>
Jay Cee	self	<input type="checkbox"/>	<input type="checkbox"/>

(Please leave prepared statement with Secretary)

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 2-10-89 Senate Bill No. 333 Time 11:29

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: Amend - Mazurek UNAN
DPA " UNAN

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 2-10 Senate Bill No. 131 Time 11:30

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: Amend - Mazurek UNAN
DPA " UNAN

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 2-10-89 Senate Bill No. 358 Time 11:39

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: Pinsonault asked to hold for study.
Hold