

## MINUTES

### MONTANA SENATE 51st LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bruce D. Crippen, on February 11, 1989, at 7:00 a.m.

#### ROLL CALL

Members Present: Chairman Crippen, Vice Chairman Bishop, Senator Beck, Senator Brown, Senator Halligan, Senator Harp, Senator Jenkins, Senator Mazurek, Senator Pinsoneault, Senator Yellowtail

Members Excused: None

Members Absent: None

Staff Present: Valencia Lane, Staff Attorney, Rosemary Jacoby, Committee Secretary

Announcements/Discussion: None

#### EXECUTIVE ACTION ON SENATE BILL 331

Discussion: Senator Crippen recalled that in testimony by Howdy Murfitt, he suggested reinserting that a close relative couldn't be a witness.

Senator Bishop stated that a practitioner would never use an interested person as a witness. The uniform probate provides for that, he said. This change would not increase the opportunity, under influence of substantial gift, by a will to a person who is not one of the witnesses to the execution of the will. That would itself be a suspicious circumstance. The gift could be challenged on grounds of undo influence. The requirement of the interested witnesses have not succeeded in preventing fraud and undo influence. And in most cases of undo influence, the influencer is careful not to sign as a witness, but to use this interested witness. He thought it ought to be left as presented.

Senator Mazurek asked how frequently Senator Bishop ran into holographic or home-prepared wills where interested

persons were used as witnesses?" Senator Bishop stated that he never saw a will that had a interested witness. The only thing that would be helpful, he said, would be for them to draw up their own will.

Amendments and Votes: Senator Halligan wanted it stated in the record that the amendments (Exhibit 1) were proposed for the reasons stated in the UPC explanation.

Senator Bishop moved that SB 331 be amended the way it is presented. The MOTION CARRIED UNANIMOUSLY.

Recommendation and Vote: Senator Halligan moved that SB 331 DO PASS AS AMENDED. The motion CARRIED UNANIMOUSLY.

#### EXECUTIVE ACTION ON SENATE BILL 358

Discussion: Senator Crippen identified the bill as Senator Williams' "right to challenge" bill. He asked the committee to look at the amendments (See Exhibit 2.) The amendments essentially (throughout the bill in several sections) take out the last line. Instead of requiring that the contract be rebid using the same specs, it requires award to the lowest responsible bidder, explained Valencia Lane, staff attorney.

#### Amendments and Votes:

Senator Beck moved amendments to Senate Bill 358. The motion CARRIED UNANIMOUSLY.

#### Further Discussion:

Senator Crippen stated that the bill does allows a contractor to contest the award in court and provides that the local government would not have to go through the bidding process again.

Valencia Lane called attention to p.2, line 13, following 2 of the amendments where it said to strike the remainder of line 13 through "bid". She said it would read would invalidate the award and order the municipality to award the bid to the lowest responsible bidder.

Senator Mazurek said that would change the crux of the bill. He asked if the "lowest responsible bidder" referred to the process or only to the dollars.

Senator Williams said that the unsuccessful bidder does not ordinarily have the opportunity to challenge the bid. All this does is grant the opportunity to challenge the bidder.

Senator Mazurek said that would change the scope of what the court could look at in making a decision.

Senator Pinsoneault said he didn't think going to court would answer all of the problems.

Senator Jenkins asked what was the reason to have bidding if it wasn't going to be enforced. Why would a person put a bid out if the local government can take any contractor they wish, he asked.

Senator Mazurek stated that the statute was passed to protect the taxpayers. The local taxpayers were the only people who could contest that, he said.

Senator Beck said he had worked with the bidding process. The process, he stated, is slowed down when it has to go to court over the specifications. Sometimes local government has to use discretion, and even though it might not be classified by the "dollar amount" of the low bid, there could be a disagreement, he said, over one or more points. He felt that, if every bid had to go to court, the process would really slow down. He felt this bill was not the vehicle to use to deal with the problem.

Senator Crippen said he sensed the bill would go down in committee and he suggested that Senator Williams work out the problem with the Montana Association of Contractors.

Recommendation and Vote: Senator Beck moved that SB 358 DO NOT PASS AS AMENDED. The MOTION CARRIED by a vote of 6 to 4 with Senators Halligan, Harp, Jenkins and Yellowtail voting NO.

EXECUTIVE ACTION ON SENATE BILL 344

Discussion: Senator Halligan moved that SB 344 DO NOT PASS.

Senator Jenkins moved to amend SB 344 (Exhibit 3).

Senator Mazurek could understand Governor Stephen's concern pertaining to the judicial nomination commission appointees, which were selected a year ago. But, when a person has accepted a position, they're entitled to serve out their term, he thought. He suggested staggering the terms from this point forward.

Senator Brown asked if this bill force the appointees to resign?" Senator Bishop stated they cannot be removed, except for cause.

Senator Harp stated that the Governor should work with a team he felt comfortable with.

Senator Beck asked what was the length of the term, and Senator Brown stated the length of the term was four years.

Senator Crippen stated that this attempt to change the length of terms was a legislative matter, not constitutional.

Amendments and Votes: Senator Jenkins MOVED that SB 344 be amended. The motion CARRIED on a 7 to 3 vote with Senators Halligan, Mazurek and Yellowtail voting NO.

Recommendation and Vote: Senator Halligan moved that SB 344 DO NOT PASS AS AMENDED. The motion CARRIED by a vote of 6 to 4 with Senators Harp, Jenkins, Crippen and Brown voting NO.

#### EXECUTIVE ACTION ON SENATE BILL 347

Discussion: There was none.

Amendments and Votes: None.

Recommendation and Vote: Senator Pinsoneault moved that SB 347 DO PASS. The motion CARRIED unanimously.

EXECUTIVE ACTION ON SENATE BILL 338

Discussion: Valencia distributed amendments (Exhibit 4) Senator Mazurek states is that crime victims compensation collects or pays the victim; then the money that this fund collects has to reimburse crime victims compensation, so that there is no double payment.

Amendments and Votes: Senator Mazurek moved the amendment on SB 338. The motion CARRIED unanimously.

Senator Halligan moved that on page 1, line 17, strike "district", and page 2, line 9, strike "district court". The motion CARRIED UNANIMOUSLY.

Recommendation and Vote: Senator Mazurek moved that SB 338 DO PASS AS AMENDED. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SENATE BILL 266

Discussion: Tom Maddox, represented the Montana Association of Tobacco Distributors asked for time to prepare some amendments for the bill. Senator Crippen agreed to postpone action until a further meeting.

EXECUTIVE ACTION ON SENATE BILL 263

Discussion: Senator Crippen said this was an act to prohibit certain sexual conduct. He said that Phil Strobe had asked for amendment of the bill. Senator Halligan asked about the penalty section on sub 2 where there was a mandatory minimum of not less than \$500 or more than a \$1000 fine on a misdemeanor. He asked if the misdemeanor was high or low. He said he would rather have a standard misdemeanor penalty. He felt it should be consistent with the standard misdemeanor penalty the court can award: \$500, 6 months in jail or both.

Amendments and Votes: Senator Halligan MOVED the amendment in changing subsection 2 to "penalty" for the person

who violates the act of guilty of a misdemeanor with the standard penalty which would not exceed \$500, 6 months in jail or both. The motion CARRIED UNANIMOUSLY.

Senator Crippen stated that, in order for it to be constitutional, the bill would have to be tied to an enforcement provision. The enforcement provision is with the alcoholic beverage license.

Recommendation and Vote:

Senator Harp MOVED that Senate Bill 263 DO PASS AS AMENDED. No action was taken on the motion.

Senator Mazurek said he had a question on page 3, (b), which prevents an operator from permitting a person to remove any alcoholic beverage sold or dispensed on license premises to adjacent or other premises for the purpose of viewing any conduct or other activity prohibited on the licensed premises. Senator Halligan said he understood that it would be legal to nude dance in church and not legal to nude dance in a bar. He said, if room service delivers alcohol to a room where nude TV is being viewed, it would violate this act.

Senator Hofman stated that this has been done in other parts of the United States, but he couldn't answer why. He felt that the bill should be amended as little as possible in order to cover this area.

Amendments and Votes:

Senator Mazurek MOVED to delete sub (b), Section 4, page 3, line 4. The motion CARRIED unanimously.

Valencia Lane said they (liquor industry ?) seems to rest their case on the right of states to regulate alcohol beverages under the 21st amendment, the problem being that it infringes on the first amendment rights of freedom of speech and expression.

Senator Brown stated that it seemed discriminatory.

Amendments and Votes: Senator Beck MOVED the Strophe Amendments (Exhibit 5). The motion PASSED on a vote of 6 to 4 with Senator Mazurek, Pinsoneault, Yellowtail and Crippen voting NO.

Senator Hofman said those amendments made the bill have absolutely no effect.

After further discussion by the committee, Senator Halligan MOVED to reconsider and remove Strobe's amendments. The MOTION CARRIED UNANIMOUSLY.

Recommendation and Vote: Senator Pinsoneault MOVED that SB 263 DO PASS AS AMENDED. The MOTION CARRIED on a vote of 7 to 3, with Senators Beck, Jenkins and Yellowtail voting NO.

#### EXECUTIVE ACTION ON SENATE BILL 307

Discussion: Senator Crippen announced that this bill dealt with the dissemination or exhibition of obscenity. Senator Yellowtail stated that the language in the Constitution, Article 2, Section 7, was used to strike down virtually identical language in two other states-- Oregon and Hawaii. He said the bill would have to be amended to be passable.

Amendments and Votes: None

Recommendation and Vote: Senator Crippen put SB 307 on HOLD. He asked the committee to study any possible amendments.

#### EXECUTIVE ACTION ON SENATE BILL 342

Discussion: Senator Jenkins moved SB 342 DO PASS.

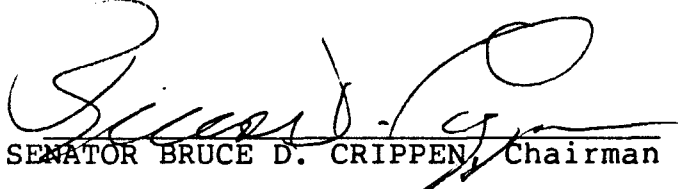
Senator Mazurek said it concerned him that a merchant could negligently misplaced this type of merchandise and be prosecuted. He suggested inserting the word "knowingly."

Amendments and Votes: Senator Halligan moved that the standard penalty of not more than \$500, 6 months or both and strike sub 2 and 3. The motion CARRIED by a vote of 9 to 1, with Senator Crippen voting NO.

Recommendation and Vote: Senator Jenkins moved SB 342 DO PASS AS AMENDED. The MOTION CARRIED UNANIMOUSLY.

ADJOURNMENT

Adjournment At: 9 a.m.



SENATOR BRUCE D. CRIPPEN, Chairman

BC/rj

min211rj.sr



ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date \_\_\_\_\_

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NAME	PRESENT	ABSENT	EXCUSED
SENATOR CRIPPEN	✓		
SENATOR BECK	✓		
SENATOR BISHOP	✓		
SENATOR BROWN	✓		
SENATOR HALLIGAN	✓		
SENATOR HARP	✓		
SENATOR JENKINS	✓		
SENATOR MAZUREK	✓		
SENATOR PINSONEAULT	✓		
SENATOR YELLOWTAIL	✓		

Each day attach to minutes.

Howdy Murfitt's  
suggested amend. A

SENATE JUDICIARY  
EXHIBIT NO. 1  
DATE 2-11-89  
BILL NO. SB 331

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

Requested by Prof. Ed Eck  
For the Committee on Judiciary

Prepared by Valencia Lane  
February 10, 1989

1. Page 7, line 1.

Following: page 6

Insert: "(3) All beneficial devises made in any will to a subscribing witness thereto are void unless there are two other competent subscribing witnesses to the same, but a mere charge on the estate of the testator does not prevent his creditors from being competent witnesses to his will.

(4) If a witness to whom any beneficial devise void under subsection (3) is made would have been entitled to any share of the estate of the testator if the testator had died intestate, such witness succeeds to so much of the share as would be distributed to him under intestate succession, not exceeding the devise or bequest made to him in the will."

SENATE STANDING COMMITTEE REPORT

page 1 of 2  
February 11, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration SB 331 (first reading copy -- white), respectfully report that SB 331 be amended and as so amended do pass:

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

AND AS AMENDED DO PASS

Signed: 

Bruce D. Crippen, Chairman

SENATE STANDING COMMITTEE REPORT

page 1 of 2  
February 11, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration SB 358 (first reading copy -- white), respectfully report that SB 358 be amended and as so amended do not pass:

- 1. Page 2, line 13.  
Following: "to"  
Strike: remainder of line 13 through "bids" on line 15  
Insert: "award the bid to the lowest responsible bidder"
- 2. Page 3, line 19.  
Following: line 18  
Strike: line 19 through "bids" on line 21  
Insert: "award the bid to the lowest and best responsible bidder"
- 3. Page 5, line 5.  
Following: line 4  
Strike: line 5 through "bids" on line 7  
Insert: "award the bid to the lowest and best responsible bidder"
- 4. Page 6, line 20.  
Following: "to"  
Strike: remainder of line 20 through "bids" on line 22  
Insert: "award the bid to the lowest responsible bidder"
- 5. Page 7, line 19.  
Following: "to"  
Strike: remainder of line 19 through "bids" on line 21  
Insert: "award the bid to the lowest responsible bidder"
- 6. Page 8, line 17.  
Following: "to"  
Strike: remainder of line 17 through "bids" on line 19  
Insert: "award the bid to the lowest responsible bidder"
- 7. Page 9, line 18.  
Following: "to"  
Strike: remainder of line 18 through "bids" on line 20  
Insert: "award the bid to the lowest responsible bidder"
- 8. Page 11, line 25.  
Following: "to"  
Strike: remainder of line 25 through "bids" on page 12 line 2  
Insert: "award the bid to the lowest responsible bidder"

9. Page 15, line 4.

Following: "to"

Strike: remainder of line 4 through "bids" on line 6

Insert: "award the bid to the lowest qualified bidder"

10. Page 16, line 17.

Following: "and"

Strike: remainder of line 17 through "bids" on line 19

Insert: "order the proper entity to award the bid to the lowest responsible bidder"

11. Page 20, line 1.

Following: "to"

Strike: remainder of line 1 through "bids" on line 3

Insert: "award the bid to the lowest responsible and responsive bidder"

12. Page 22, line 13.

Following: "to"

Strike: remainder of line 13 through "bids" on line 15

Insert: "award the bid to the lowest responsible bidder"

13. Page 24, line 8.

Strike: line 8 through "bids" on line 10

Insert: "award the bid to the lowest responsible bidder"

14. Page 25, line 15.

Following: "to"

Strike: remainder of line 15 through "bids" on line 17

Insert: "award the bid to the lowest responsible bidder"

15. Page 27, line 1.

Following: "to"

Strike: remainder of line 1 through "bids" on line 4

Insert: "award the bid to the lowest qualified bidder"

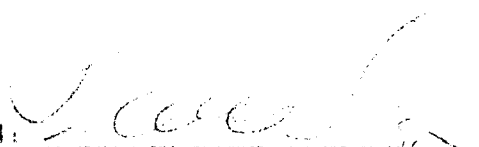
16. Page 28, line 7.

Following: "to"

Strike: remainder of line 7 through "bids" on line 9

Insert: "award the bid to the lowest responsible bidder"

AND AS AMENDED DO NOT PASS

Signed: 

Bruce D. Crippen, Chairman

41.0  
2/11/04  
9:55  
6.0001

SENATE STANDING COMMITTEE REPORT

February 11, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration SB 344 (first reading copy -- white), respectfully report that SB 344 be amended and as so amended do not pass:

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: "3-1-1991" 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."

AND AS AMENDED DO NOT PASS

Signed: *[Signature]*  
Bruce D. Crippen, Chairman

41.6  
2/13/89  
9.55  
Q. [Signature]

SENATE STANDING COMMITTEE REPORT

February 13, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration SB 347 (first reading copy -- white), respectfully report that SB 347 do pass.

DO PASS

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

Bruce P. Crippen, Chairman

71.0.  
2/13/89  
9:55  
P.A. [initials]



SENATE STANDING COMMITTEE REPORT

February 11, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration SB 338 (first reading copy -- white), respectfully report that SB 338 be amended and as so amended do pass:

1. Page 1, line 17.

Following: "the"

Strike: "district"

2. Page 2, line 9.

Following: "A"

Strike: "district court"

3. Page 2, line 15.

Following: line 14

Insert: "(3) Moneys in the county restitution fund that are due to a victim under this part must be paid to the crime victims compensation account, as defined in 53-9-109, if payments have been made to or on behalf of the victim from the account. Payment from the county restitution fund to the crime victims compensation account may be made only from moneys paid by the offender who caused the injury or death that resulted in the payment from the account."

AND AS AMENDED DO PASS

Signed: 

Bruce D. Crippen, Chairman

SENATE STANDING COMMITTEE REPORT

February 11, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration SB 263 (first reading copy -- white), respectfully report that SB 263 be amended and as so amended do pass:

1. Page 2, line 23.

Following: "exception."

Strike: "(1)"

2. Page 2, lines 24 and 25.

Following: "person" on line 24

Strike: remainder of line 24 through "(s)" on line 25

3. Page 3, lines 3 through 10.

Following: "premises" on line 3

Strike: remainder of line 3 through "residence" on line 10

4. Page 3, line 22.

Following: "fine"

Strike: "of not less than"

Insert: "not to exceed"

5. Page 3, line 23.

Following: "or"

Strike: "more than \$1,000,"

Following: "for"

Insert: "a term"

Following: "not"

Strike: "more than"

Insert: "to exceed"

AND AS AMENDED DO PASS

Signed: 

Bruce E. Clipperton, Chairman

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SENATE STANDING COMMITTEE REPORT

February 11, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration SB 342 (first reading copy -- white), respectfully report that SB 342 be amended and as so amended do pass:

1. Page 4, line 20.  
Following: "not"  
Strike: "less than"  
Insert: "to exceed"  
Following: "or"  
Insert: "be"

2. Page 4, line 21.  
Following: "for"  
Insert: "a term"  
Following: "not"  
Strike: "more than 1 month"  
Insert: "to exceed 6 months"

3. Page 4, line 22 through page 5, line 3.  
Strike: subsections (2) and (3) in their entirety  
Renumber: subsequent subsection

AND AS AMENDED DO PASS

Signed: Bruce D. Crippen  
Bruce D. Crippen, Chairman

2-15-89  
597

Amendments to Senate Bill No. 358  
First Reading Copy

Requested by Senator Williams  
For the Committee on Judiciary

Prepared by Greg Petesch  
February 10, 1989

1. Page 2, line 13.  
Following: "to"  
Strike: remainder of line 13 through "bids" on line 15  
Insert: "award the bid to the lowest responsible bidder"
2. Page 3, line 19.  
Following: line 18  
Strike: line 19 through "bids" on line 21  
Insert: "award the bid to the lowest and best responsible bidder"
3. Page 5, line 5.  
Following: line 4  
Strike: line 5 through "bids" on line 7  
Insert: "award the bid to the lowest an best responsible bidder"
4. Page 6, line 20.  
Following: "to"  
Strike: remainder of line 20 through "bids" on line 22  
Insert: "award the bid to the lowest responsible bidder"
5. Page 7, line 19.  
Following: "to"  
Strike: remainder of line 19 through "bids" on line 21  
Insert: "award the bid to the lowest responsible bidder"
6. Page 8, line 17.  
Following: "to"  
Strike: remainder of line 17 through "bids" on line 19  
Insert: "award the bid to the lowest responsible bidder"
7. Page 9, line 18.  
Following: "to"  
Strike: remainder of line 18 through "bids" on line 20  
Insert: "award the bid to the lowest responsible bidder"
8. Page 11, line 25.  
Following: "to"  
Strike: remainder of line 25 through "bids" on page 12 line 2  
Insert: "award the bid to the lowest responsible bidder"
9. Page 15, line 4.  
Following: "to"  
Strike: remainder of line 4 through "bids" on line 6  
Insert: "award the bid to the lowest qualified bidder"

10. Page 16, line 17.

Following: "and"

Strike: remainder of line 17 through "bids" on line 19

Insert: "order the proper entity to award the bid to the lowest responsible bidder"

11. Page 20, line 1.

Following: "to"

Strike: remainder of line 1 through "bids" on line 3

Insert: "award the bid to the lowest responsible and responsive bidder"

12. Page 22, line 13.

Following: "to"

Strike: remainder of line 13 through "bids" on line 15

Insert: "award the bid to the lowest responsible bidder"

13. Page 24, line 8.

Strike: line 8 through "bids" on line 10

Insert: "award the bid to the lowest responsible bidder"

14. Page 25, line 15.

Following: "to"

Strike: remainder of line 15 through "bids" on line 17

Insert: "award the bid to the lowest responsible bidder"

15. Page 27, line 1.

Following: "to"

Strike: remainder of line 1 through "bids" on line 4

Insert: "award the bid to the lowest qualified bidder"

16. Page 28, line 7.

Following: "to"

Strike: remainder of line 7 through "bids" on line 9

Insert: "award the bid to the lowest responsible bidder"

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)

*Shirley* BILL NO. 244  
*Harp Cupper*

INTRODUCED BY \_\_\_\_\_  
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 ~~SHALL SERVE AT THE PLEASURES 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.  
(3) On and after [the effective date of this act], the governor shall appoint ~~at the beginning of each~~

~~subscribed to 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 in  
am # 6  
(4)(a)  
(b)



SENATE JUDICIARY  
EXHIBIT NO. 4  
DATE 2-11-89  
BILL NO. SB 338

Amendments to Senate Bill No. 338  
First Reading Copy (WHITE)

Requested by Senator Mazurek  
For the Committee on Judiciary

Prepared by Valencia Lane  
February 10, 1989

1. Page 2, line 15.

Following: line 14

Insert: "(3) Moneys in the county restitution fund that are due to a victim under this part must be paid to the crime victims compensation account, as defined in 53-9-109, if payments have been made to or on behalf of the victim from the account. Payment from the county restitution fund to the crime victims compensation account may be made only from moneys paid by the offender who caused the injury or death that resulted in the payment from the account."



SB 266  
DATE: 2-11-89

NAME: Tom Maddox

ADDRESS: P.O. Box 123, Helena MT 59624

PHONE: 442-1582

REPRESENTING WHOM? MT Association of Tobacco Distributors

APPEARING ON WHICH PROPOSAL: SB 266

DO YOU: SUPPORT?  AMEND?  OPPOSE?

COMMENTS: SB 266 <sup>on minors' tobacco</sup> cleared here 9-1.

1- Requesting a specific, but reasonable, time in which to submit amendments re: penalties and vending machines.

2- It's the right thing to do to put SB 266 on the books. Parents need such an act as help. Children need some help.

3- This is law that's going to be in Montana. There is no need to delay until the next session.

4- Senator Walker wants to get this done. He has compromise amendment proposals. He needs time. How about Wednesday 2/15?

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SB 266 - Needed to spell out H1-3-101 (2) - re: state's policy to protect children from abuse.

*Strope Amendment*

AMENDMENT PROPOSED BY THE MONTANA TAVERN ASSOCIATION TO THE  
SENATE JUDICIARY COMMITTEE HEARING ON SB263, FEBRUARY 9, 1989:

~~SECRET~~  
*Exhibit* 5  
DATE 2-11-89  
BILL NO. SB 263

Senate BILL NO. 263

INTRODUCED BY Hofman, and others.

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROHIBIT CERTAIN SEXUAL  
CONDUCT ON A PUBLIC PREMISE; AND PROVIDING A PENALTY."

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

NEW SECTION. Section 1. Definitions. As used in (this  
act), the following definitions apply:

(1) "Premise" means any facility open to the public.

(2) "Operator" means the owner, manager, or person in  
charge of a premise.

NEW SECTION: Section 2. Performance of actual or simulated  
sexual acts, touching of certain areas of the body, or nudity on  
a premise -- use of artificial devices or inanimate objects. (1)  
A person may not perform on a premise acts that constitute or  
simulate:

(a) sexual intercourse, masturbation, sodomy, bestiality,  
oral copulation, flagellation, or any sexual acts that are  
prohibited by law;

(b) the touching, caressing, or fondling of the breast,  
buttocks, anus, or genitals; or

(c) the displaying of any portion of the female breast  
below the top of the areola or the displaying of any portion

1 of a person's pubic hair, anus, cleft of the buttocks, vulva, or  
2 genitals.

3 (2) A person may not use, on a premise, artificial devices  
4 or inanimate objects to perform, simulate, or depict any of the  
5 prohibited conduct or activities described in subsection (1).

6 NEW SECTION. Section 3. Display of visual images of sexual  
7 acts or nudity. It is illegal for a person to show, display, or  
8 exhibit, on a premise, any film, still picture, electronic  
9 reproduction, or any other visual reproduction or image of any  
10 act or conduct described in (section 2).

11 NEW SECTION. Section 4. Viewing sexually related acts  
12 or conduct performed off the premise -- exception. (1) An  
13 operator may not knowingly permit a person on a premise to view  
14 from the premise, by glass partition or other artifice, an act  
15 or conduct described in (section 2) and performed off a premise.

16 NEW SECTION. Section 5. Employment of or assistance to  
17 persons engaged in sexually related conduct, activity, or nudity.  
18 An operator may not employ, encourage, permit, or assist any  
19 person to engage in any conduct or activity in violation of  
20 (this act).

21 NEW SECTION. Section 6. An operator who violates (this  
22 act) is guilty of a misdemeanor and may be punished by a fine  
23 of not less than \$500 or more than \$1,000, by imprisonment for  
24 not more than 6 months, or both.

25 -End-

Amendments to Senate Bill No. 307  
First Reading Copy (WHITE)

Requested by Senator Yellowtail  
For the Committee on Judiciary

Prepared by Valencia Lane  
February 10, 1989

1. Title, line 5.

Following: "DISSEMINATING"

Strike: "OBSCENITY"

Insert: "CERTAIN OBSCENE MATERIALS"

2. Page 2, line 6.

Following: "conduct"

Strike: "includes"

Insert: "is defined as"

3. Page 2, lines 12 through 14.

Following: "torture" on line 12

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

Insert: ";

(d) sexual abuse of children, meaning an act or condition that depicts a child engaging in sexual contact, either actively or passively.

(6) For purposes of this section, "child" means any person who is under 16 years of age"

4. Page 2, line 16.

Following: "obscenity"

Insert: "to a minor"

Following: "offense of"

Insert: "exhibition or dissemination of"

5. Page 2, line 17.

Following: "obscenity"

Insert: "to a minor"

6. Page 2, lines 20, 22, and 24.

Page 3, line 2.

Following: "performance"

Insert: "to a minor"

7. Page 3, line 5.

Following: "children"

Strike: "or other especially susceptible audiences"

8. Page 3, line 8.  
Following: "children"  
Strike: "or susceptible audiences"

9. Page 3, line 11.  
Following: "dissemination"  
Insert: "to a minor"

10. Page 3, line 12.  
Following: "of"  
Insert: "exhibition or distribution of"  
Following: "obscenity"  
Insert: "to a minor"

11. Page 3, lines 15 through 23.  
Following: "both." on line 15  
Strike: remainder of lines 15 through 23 in their entirety  
Renumber: subsequent subsections

12. Page 4, line 4.  
Following: line 3  
Insert: NEW SECTION. Section 3. Exhibition or dissemination of obscene material depicting sadomasochistic abuse or obscene material depicting the sexual abuse of children -- penalty.  
(1) A person commits the offense of exhibition or dissemination of obscene material depicting sadomasochistic abuse or obscene material depicting the sexual abuse of children if he knowingly or purposely:  
    (a) sells, rents, delivers, provides, or offers or agrees to sell, rent, deliver, or provide any obscene material or performance depicting sexual conduct as defined in [section 1(5)(c) or (5)(d)];  
    (b) presents, participates in, or directs an obscene play, dance, or other performance depicting sexual conduct as defined in [section 1(5)(c) or (5)(d)];  
    (c) publishes, exhibits, or otherwise makes available any obscene material or performance depicting sexual conduct as defined in [section 1(5)(c) or (5)(d)];  
    (d) exhibits, presents, rents, sells, delivers, or provides or offers or agrees to exhibit, present, rent, sell, or provide any obscene material or performance depicting sexual conduct as defined in [section 1(5)(c) or (5)(d)]; or  
    (e) knowingly or purposely creates, buys, procures, or possesses obscene material depicting sexual conduct as defined in [section 1(5)(c) or (5)(d)] for dissemination.  
(2) A person convicted under this section shall for each violation be fined a minimum of \$500 but not more than \$5,000, imprisoned in the county jail for a term not to exceed 6 months, or both. Upon a second conviction, a person is guilty of a felony and may be fined an amount not to exceed \$50,000, imprisoned for a term not to exceed 10 years, or both.

(3) Obscene material disseminated, procured, or promoted in violation of this section is contraband.

(4) Cities, towns, or counties may adopt ordinances or resolutions that are more restrictive than the provisions of this section and 45-8-202."

Renumber: subsequent sections

13. Page 4, line 25.  
 Following: "[Sections 1"  
 Strike: "and 2"  
 Insert: "through 3"

14. Page 5, line 3.  
 Following: "[sections 1"  
 Strike: "and 2"  
 Insert: "through 3"

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 2-11-89 Senate Bill No. 331 Time \_\_\_\_\_

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

10 . . . 0 UNH

Rosemary Jacoby  
Secretary

Sen. Bruce Crippen  
Chairman

Motion: Bishop moved  
Amend A Moved - changing age from 18 to  
from 18 to 21 - UNAI  
Halligan DPA UNAI

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 2-11-89 Senate Bill No. 358 Time \_\_\_\_\_

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: Sen. Beck Do Not Pass AS AMENDED



ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 2-11-89 Senate Bill No. 344 Time 7:45

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

7 . 3

Rosemary Jacoby  
Secretary

Sen. Bruce Crippen  
Chairman

Motion: \_\_\_\_\_

Sen. Halligan DNP

(Substitute) Motion Jenkins Moved Amend. 7-3

DNPAA - Sen. Halligan

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date Senate Bill No. 344 Time 9:50

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

6. 4

Rosemary Jacoby  
Secretary

Sen. Bruce Crippen  
Chairman

Motion: Halligan's  
DNPAA Carries 6-4

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 2-11-89 Senate Bill No. 347 Time 7:51a.m.

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's DP - UNAN

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 2-11-89 Senate Bill No. 338 Time 7:56 #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: Amend Moved UNAN  
Halligan Amend (p. 1) 17 no yes  
Halli DPAA (p. 2) 10 no yes  
Halli DPAA UNAN

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 2-11-89 Senate Bill No. 338 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	✓	

*6 to 4*

Rosemary Jacoby  
Secretary

Sen. Bruce Crippen  
Chairman

Motion: Beck: Do Not Pass as Amended

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 2-11-89 Senate Bill No. 263 Time ~~10~~

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's DPAA  
Halligan w/ reconsider Strape amend.

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 2-11-89 Senate Bill No. 263 Time 8:10

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

6 . 4

Rosemary Jacoby  
Secretary

Sen. Bruce Crippen  
Chairman

Motion: Senator Beck Moved the  
Strike Amend. Carries 6-4  
Removes alcoholic beverages sale

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 2-11-89 Senate Bill No. 263 Time 8:15

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

*7 to 3*

Rosemary Jacoby  
Secretary

Sen. Bruce Crippen  
Chairman

Motion:

Pinsonneault DPA Passed  
4-3



ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 2-11-89 Senate Bill No. 307 Time \_\_\_\_\_

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 Moved Amend 30701-av1.  
Denkers moved 302.

Hold