

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION
COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bruce D. Crippen, on February 15, 1989, at 10:00 a.m.

ROLL CALL

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

Members Excused: Senator Jenkins

Members Absent: None

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

Announcements/Discussion: There were none.

HEARING ON SENATE BILL 404

Presentation and Opening Statement by Sponsor: Senator Manning opened the hearing. He stated that the bill provided for the satisfaction of a judgement lien upon termination of a defaulted contract for deed upon sale of a judgment debtors property.

List of Testifying Proponents and What Group they Represent:

Daniel B. Levine, title insurance representative, for himself

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Daniel Levine stated the purpose of this act was to provide a way of obtaining the releases of judgement liens in cases where the party holding the judgement lien attempts to "highjack" property above and beyond the

value of the lien as a condition of giving the lease. The person could threaten to stop a sales proceeding, unless they were given a consideration. The purpose of the bill is to provide a statute whereby the judgement lien creditor would be offered the actual value of this lien, and if he refuses, he would have the option was of accepting that or paying the damages caused by his refusal.

Questions From Committee Members: Senator Mazurek asked if the American Land Association supported the bill.

Daniel Levine stated that he was sponsoring himself, but that everyone he had talked to in the title business supported it.

Senator Mazurek asked if it was something he had written himself.

Daniel Levien stated that he wrote it himself in response to numerous situations. He said he had been involved with the Great Falls people who prevented the sale of property from going through when they had the judgment lien. He said he believes that this bill was in line with the Hannah vs. Martinson case, a Southern Montana case. State law doesn't provide a method of dissolving a judgment lien, he said.

Senator Crippen asked if had talked to anybody in the Chicago Title Co. in Great Falls.

Daniel Levine said that he talked to his regional manager, Duane Stotelby of First American who attended the University of Montana Law School. He had also talked to Bill McGowen of the Helena Title Co. The problem was a limited amount of money to spend lobbying for the bill.

Senator Mazurek suggested that Senator Manning contact Glen Kenny and Gene Phillips who lobbied for the American Land Title Association for further support on the bill.

Closing by Sponsor: Senator Manning closed.

HEARING ON SENATE BILL 401

Presentation and Opening Statement by Sponsor: Senator Mazurek of Helena, District 23, stated that this bill was drafted at the request of the University System.

The state operates a state student loan program. This bill would assist the University System's Board of Regents in enforcing collection of defaulted student loans, by helping to obtain access to the whereabouts of the income and property of student loan debtors. Information that the DOR or other governmental agencies would become available to them for purposes relating to the collections of student loans or other education debts. Senator Mazurek stated he would like to insert "relevant information" instead of "information" so the bill would not be too broad.

List of Testifying Proponents and What Group they Represent:

Leroy Schron, Chief Legal Counsel of the Montana University System, representing the Board of Regents

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Leroy Schron, stated that the system of guaranteeing student loans in all states was modeled after federal legislation. The federal government authorizes states to set up their own guarantee agency that acts as a middle man between banks in the state and the federal government. He stated that the banks give out the student loans. The GSL program is the loan agency which is guaranteed by the Board of Regents. If at any time that loan goes into default (they don't have to start paying until 9 months after they finish school), the terms of the guaranteed agreements of the GSL program is obligated to buy that loan back from the bank at face value. The bank is not at risk. The federal government then reimburses the state either 100% with a default rate of less than 5%, 90% if default rate is less than 10%, or 80% if default rate is less than 10%. Our default rate is around 5%, he said. We have been getting reimbursed at either 90% or 100%, but still are under an obligation, even if the federal government reimburses us at 90% or 100% to pursue the borrower and collect. If we do collect from a default borrower, the Federal Government would receive 70% and GSL 30% , we can subtract that from our default rate. The more collections we do, the lower our default rate will be. This will help us get reimbursed at 100% from the

Federal Government. He would urged the committee to support to the bill.

Opponents:

None

Questions From Committee Members: Senator Beck asked Senator Mazurek if the bank would have access to the information in attempting to collect for the loans.

Senator Mazurek thought not.

Senator Beck asked if this applied strictly to Montana governmental records.

Senator Mazurek stated it applied only to the Montana Guaranteed Student Loan program. The Montana program is required to pay the bank and is entitled to be reimbursed, he said.

Senator Beck asked what would happen if the student moved out of state. He also asked if there were any cooperative agreements.

Senator Mazurek stated that he did not have that information.

Senator Yellowtail asked precisely what information was being sought by the bill.

Leroy Schrom stated that they were trying to obtain location, the income or the property information of the debtor.

Senator Yellowtail asked if line 16 stating, "any relevant information regarding the location, income, or property of the debtor" would be restricted requesting that information.

Leroy Schrom felt that would be restricted. He concurred with Senator Yellowtail's reading of the bill.

Senator Yellowtail asked if, under any other circumstance, we permitted the Department of Revenue to provide that information.

Leroy Schrom stated only in child support. He said they told the University System that this was considered

private information. He said this case may not be the same priority as child support, but he felt that the student loans should be repaid. If the Board of Regents didn't keep its default rate low, it would be reimbursed at the lower levels. He felt the program could not exist at a 80% reimbursement rate. If the program ever existed at a 90% reimbursement rate over a long period time, it was dubious it could exist. Banks would be less willing to make student loans.

Senator Pinsonneault asked what was the maximum a student could be indebted.

Leroy Schrom stated that it was increasing each year, but felt it was \$10,000 or \$15,000 for an undergraduate and \$20,000 for graduate school. The more typical number would be \$3,000, \$4,000 or \$5,000, he said.

Senator Beck asked how serious of a problem this was.

Leroy Schrom said that the Montana program itself had just begun. The Board of Regents was authorized by the 1987 Legislature to start a program. In 1980-1981, the program started guaranteeing the loans. In the last three years, repayment status has begun, he said. He stated that this collection originally was done in Indianapolis by the Loan Servicing Corporation. The Regents felt, in order to save money, they could do it themselves.

Closing by Sponsor: Senator Mazurek closed by saying he felt the scope could be narrowed and would not object, if the committee agreed to the income information. The entire student loan program would be in jeopardy if the bill didn't pass, he said. He closed the hearing urging support of the bill.

HEARING ON SENATE BILL 373

Presentation and Opening Statement by Sponsor: Senator Pinsonneault of St. Ignatius, District 27, opened the hearing on SB 373. (See Exhibit 1). He said that drug use was in every part of American life and was tearing at the fabric of American society itself. He said it is thought that Americans use marijuana regularly and, up to 8 million are on cocaine. He said drug sales had soared to \$110 billion annually, more than farm

production. He gave statistics of students using drugs in the Billings area and said that drug use in youth is starting at an earlier age. He thought a program of testing and determining problems at an early stage and providing treatment might eventually provide an alcohol and drug-free workplace. The bill, he stated, is to establish a separate classification of private employers who would be allowed to test for alcohol or drug use by employees or applicants for private employment. He then presented Exhibit A-1 to the committee.

List of Testifying Proponents and What Group they Represent:

Steve Browning, Branch Manager for IBM in Montana
Randy Romney, IBM
Ben Havdahl, Montana Motor
Ann Scott, Rocky Mountain Treatment Center
John Augustine, Conoco
Janelle Fallan, Montana Petroleum Association, Division
of Rocky Mountain Oil and Gas Associates
John Fitzpatrick, Pegasus Gold
Don Ingels, Montana Chamber of Commerce
George Fenner, Chemical Dependency Program
Toni Cooper, Stone Container Corporation

List of Testifying Opponents and What Group They Represent:

Dan Edwards, Oil, Chemical and Atomic Workers, AFL-CIO
Wilbur Rehmann, Montana Nurses Association
Nadiean Jensen, AFSCME, AFL-CIO
James T. Malar, Montana Joint Rail Labor
Keith Boone, Montana Nurses Association, on behalf of
Pamela Crane
Terry Minnow, Montana Federation of Teachers

Testimony:

Steve Browning, represented IBM. Mr. Browning said the bill was different from the one proposed last session in only one section. Drug and alcohol testing would be permitted only in those cases where it is clear that the testing would be done for the benefit of the employees. He then presented written testimony regarding the bill. (See Exhibit 1).

Randy Romney, stated that IBM has a positive drug and alcohol abuse program. Montana is the only state that

limited the company's ability to implement this program designed for both current employees and retirees from the company, as well as dependents of employees. (See Exhibit 2). He has been personally involved in situations where employees took the advantage of the program and were now working for IBM. If they have an employee whose work has deteriorated including absences, communication with other fellow employees and promoting problems with the customers, there were two ways to handle the situation: 1. Medically - recommend the employee to see a physician to determine if testing needs be done, and 2. Administratively - put the employee on an improvement plan that requires their work to move up to an acceptable performance or they would be terminate from employment. He would like to see this bill pass.

Ben Havdahl, represented the Montana Motor Carriers. (See Exhibit 3).

Ann Scott, representing Rocky Mountain Treatment Center, stated that she was in support of SB 373. She felt the problems with the employer was that he was encouraged courage to wait to take action until it was production had failed and it was necessary to dismiss the employee. Ann had two amendments for SB 373. She felt these amendments made the bill more consistent with Montana law. On page 2, line 16, following "program" includes allocation or in patient as a requirement. This would clarify what an employee assistant program was. Also on page 2, line 19, following "hospital" insert "or prove chemical chemistry treatment program". She urged the committee to support the amendments and SB 373.

John Augustine, represented Conoco. (See Exhibit 4).

Janelle Fallan, representing Montana Petroleum Association, stated that Conoco was not the only refinery that supported this bill. Operating a safe workplace is of prime importance to refinery operators, she stated. Refineries have drug programs, and provide treatment for dependency. The program would not take time away from work. She said drug counselling was part of a negotiable contract with the refinery unions. They believe SB 373 provides a great deal of protection of worker's rights. She said there is a need for 373 to protect not the only the safety and health of the employers, but the communities around them. Drug

testing can take place in any state but Montana under current law, she said.

John Fitzpatrick, representing Pegasus Gold, stated he felt the bill did not erode the protections that were built into present law. He agreed that it should be passed.

Don Ingels, representing Montana Chamber of Commerce, stated they supported the bill. He felt SB 373 would help to clarify the relationship between employers and employees.

George Fenner, representing the Chemical Dependency Program, stated that they supported SB 373 with the amendments proposed by Ann Scott.

Toni Cooper, representing Stone Container, stated that they currently test for drugs in employment situations and for just cause because of a 1987 law. She felt that the employers have a responsibility to provide a drug-free work environment and should have the means to carry that out. Legally an employer should have to provide financially for treatment, she thought. She asked that the committee look into an employer-funded drug treatment program.

Opponents:

Dan Edwards, represented the Oil Chemical and Atomic Workers. (See Exhibit 5).

Wilbur Rehmann, representing the Montana Nurses Association, spoke in opposition to SB 373. He felt that employees with drug problems which are supposed to be solved through the drug assistance program could be accomplished under the current law. (See Exhibit 6.) He felt that the analysis could not measure current impairment or intoxication, pin point when a substance was taken or how much was ingested, or what was the length or intensity of the exposure. Instead, the analysis could reveal what certain substance a person may have taken the increasing widespread use of the test that monitors the employees' off duty activities was ratifying the line between employer authority and employee privacy. And privacy is clearly the loser, he said. He urged the committee to give a Do Not Pass on the SB 373.

Nadlean Jensen, representing the AFCME, AFL-CIO, opposed SB 373. She asked the committee to vote no on SB 373.

James T. Malar, representing the Montana Joint Rail Labor Legislative Board, stated that they were before the Supreme Court involving random drug testing and the question of invasion of privacy arose. He stated that they opposed this legislation.

Keith Boone, from the Montana Nursing Association spoke on behalf of Pamela J. Crane. (See Exhibit 7).

Terry Minnow, representing the Montana Federation of Teachers and Montana State of Employees, stated that they rise in strong opposition to SB 373. As currently written, the bill could affect the public and as well as private employees. He felt that the provisions and purposes were not clear and that it eliminated workers protections found currently in law. He asked the committee to give this bill a Do Not Pass recommendation.

Bill Campbell, representing the Montana Education Association, stated that they rise in opposition to SB 373. He felt the bill was not necessary, because the current law was adequate.

Questions From Committee Members: Senator Yellowtail felt there had been conflicting testimony as to the real purpose of the bill. He also asked Senator Pinsoneault if the committee could amend the bill on page 2, line 4 to clarify testing as a condition of employment or to compel the employee to be in the program.

Senator Pinsoneault stated that it would not do any great damage.

Senator Mazurek stated that the previous discussion dealt with unreliability of the drug and alcohol tests, and the elimination of the probable cause requirement. He asked to hear from both the proponents and Mr. Edwards.

Steve Browning stated that on page 3, lines 1-21, reflected the amendments this committee added based on the concerns that were raised in Senator Mazurek's questions. The bill proposed last session by Senator Boylan did not address those items initially. Most of

the states that have addressed the question of drug testing have focused only on reliability and validity of the testing.

Senator Mazurek asked about page 3, line 22, why the requirements were being taken out.

Browning stated that almost all results of drug tests are negative. This was an attempt to avoid the expense of notifying negatively tested personnel. He felt the sensible way to have drafted that portion of the bill would have been to say that the employer was required to notify the employee only if the test results were positive. If they were negative the employer could request those results. This would be done to save additional costs.

Dan Edwards stated that the liability of tests results were just as valid today as they were 10 years ago. Some of these companies are using ridiculously low cutoffs which detect marijuana use.

Senator Mazurek asked Senator Pineseault what was a reasonable period to reapply for their position at work after testing positive. He felt that the time period should be brought down a little.

Senator Pineseault stated that cocaine metabolizes very quickly and within 5 days the chances of if being negative was very rare. He did not object to decrease of the time limit.

Senator Mazurek stated to Steve Browning that he didn't understand the sub (b) on page 2, line 17, and asked if there should be some requirement of reasonable benefit whether it be 5% or 90% and also asked about an employer/employee match.

Steve Browning stated that the intent is emphasis as a treatment being paid for by the employer. He felt that few employers would qualify, but would be willing to amend the bill to clarify that.

Senator Beck thought that applicants might object to testing. He thought the person could be hired and tested 6 months later.

Senator Pineseault stated that, if he was going to hire a career-oriented person, he would like to know what his

"product" was before investing a substantial amount of money and time in the employee.

Closing by sponsor: Senator Pinsoneault closed by saying that he felt the bill would apply to a very select type of employer who would not qualify unless he had a certain program in place. In addition, he said punitive measures had been placed into this law. He felt that there was an important balance between privacy and testing that must take place in order to deal effectively with the drug problems. Legislation would extend privileges only to employers who have demonstrated good faith concerns about the welfare of their employees. He hoped the bill would discourage the use of drugs in American society, he said, and closed the hearing.

EXECUTIVE ACTION ON SENATE BILL 307

Discussion: Senator Crippen stated that Senator Yellowtail had amendments to act on regarding the definition of obscenity and sexual abuse of children . (See Exhibit 8)

Senator Yellowtail called attention to page 2, line 14, "violent pornography" and on page 2, line 12 to restrict the issue to minors. He thought this would deal with the constitutional problems the bill might have.

Senator Hofman said the rules of the legislature state that no bill should be changed drastically. Senator Yellowtail's amendments, he felt, would do just that. He said it would change the bill into a child abuse bill which is already covered by U. S. law, according to Pete Dunbar, U. S. Attorney. Pete Dunbar said that several cases had been successfully prosecuted. These amendments would eliminate the purpose of the bill, he said, which was to eliminate the sale of hard-core pornographic material, 70% of which ended up in the hands of the young. They would eliminate anything dealing with porno shops, triple X movies, and adult bookstores. He felt the A.C.L.U. would be happy if Montana continued to be one of the states where these produces could be sold and distributed.

Senator Yellowtail said he was not a member of the A.C.L.U. and it wasn't his intention to protect pornographers, but he was trying to make the bill constitutional. He thought that, even with the amendments, it was a step in the right direction.

Senator Beck asked why Senator Yellowtail chose the age of 16 in the amendments. He was told that referred to children appearing in "kiddy porn". "Minor" referred to the display of material.

Senator Mazurek asked about amendments that might apply to the sale of liquor and liquor licensing relating to motel or hotel owners. Valencia said she felt the intent was to take the law back to what it currently was, and to limit the scope of the bill to distribution of obscenity to minors. It would also limit access to anyone regardless of age the masochistic or kiddy porn, she said.

Amendments and Votes: Senator Yellowtail MOVED the amendment. The MOTION FAILED on a vote of 1 to 9 with Senator Yellowtail voting YES.

Recommendation and Vote: Senator Yellowtail moved that SB 307 DO PASS. The MOTION CARRIED UNANIMOUSLY.

DISCUSSION ON SENATE BILLS 263 and 342
(Previously acted on in committee on 2-11-89)

Senator Crippen told the committee that, because of the numerous phone calls and letters regarding the other two obscenity bills, he had not turned in the standing committee reports. He wanted to give the committee an opportunity to reconsider them and their amendments before reporting them out of committee. After discussion of the amendments and the reasons for them, it was decided to turn in the standing committee reports without reconsideration of them.

EXECUTIVE ACTION ON SENATE BILL 353

Discussion: Sheriff O'Reilly stated that the amendments he saw were the ones "we" requested, except that they did not strike fiscal language in Section 6. The language that they asked for had been included in Section 5. "Requested an agency to receive assistance" had been corrected, he said, as well as the effective date.

Amendments and Votes:
Senator Halligan MOVED the amendments. (See Exhibit 9)

Valencia Lane stated that they simply requested on page 3,

line 19, that any reference to the National Guard be stricken. She said there is a problem in having a statutory appropriation in the bill, because it is a senate bill and you cannot have an appropriation in a senate bill. So, it was illegally introduced. Rather than having it reintroduced in the House, the approach was to take out the statutory appropriation language. The amendment did that, but does not address the problem on page 4, line 5, that 1/2% rate is 10 million dollars. She said she had the figure in that could be put in, but no one requested it be drafted that way.

O'Reilly stated that this was originally assigned as two bills. The funding was totally separate from the one regarding giving assistance. He thought that this bill would be killed in its entirety if the funding aspect is left in. He said he preferred amending the bill and keeping it alive.

Amendments and Votes: Senator Halligan MOVED the amendments. No action was taken.

After further discussion, Senator Mazurek MOVED that the committee adopt the amendments #1, 2, and 7 which is the effective date and title. He also moved that Section 6, 7, 8, and 9 be deleted. The MOTION CARRIED UNANIMOUSLY.

Recommendation and Vote: Senator Mazurek MOVED that SB 353 DO PASS AS AMENDED. The MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SENATE BILL 367

Discussion: Senator Beck MOVED that SB 367 Do Pass. He WITHDREW his motion so that the bill could be amended.

Amendments and Votes: Senator Crippen MOVED the amendment which had previously been suggested. The MOTION CARRIED UNANIMOUSLY.

Recommendation and Vote: Senator Beck moved that SB 367 DO PASS AS AMENDED. The MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SENATE BILL 377

Discussion: Senator Mazurek stated he wanted protection for the innocent spouse. He said that the AG's office would prefer not to have that in there but wanted discretion by the prosecutors.

John Connor, representing AG, stated they don't have any problems with protecting an innocent spouse, but it would be creating an exception for a criminal. It would create a flag that the defender could use to protect himself.

Senator Mazurek surrendered!

Amendments and Votes: Senator Yellowtail MOVED his amendments. (See Exhibit 10). The motion CARRIED with Senators Pinsoneault and Crippen voting NO.

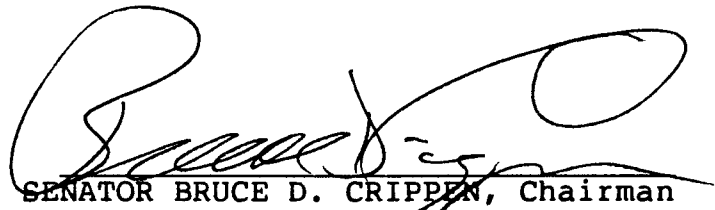
Recommendation and Vote: Senator Brown moved that SB 377 DO PASS AS AMENDED. The MOTION CARRIED UNANIMOUSLY.

DISPOSITION OF SENATE BILL 291

Recommendation and Vote: Senator Harp MOVED that Senate Bill 291 BE TABLED. The MOTION CARRIED UNANIMOUSLY.

ADJOURNMENT

Adjournment At:



SENATOR BRUCE D. CRIPPEN, Chairman

BC/rj

min215.sr

ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date 2-15-89

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.

2-15
a.m.

SENATE STANDING COMMITTEE REPORT

February 15, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration SB 307 (first reading copy -- white), respectfully report that SB 307 do pass.

DO PASS

Signed: _____
Bruce D. Criften, Chairman

41. C. 189
2/16/89
10:03
a.m.

SENATE STANDING COMMITTEE REPORT

February 16, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration SB 353 (first reading copy -- white), respectfully report that SB 353 be amended and as so amended do pass:

1. Title, lines 8 through 10.
Following: "ASSISTANCE;" on line 8
Strike: remainder of line 8 through "NCA;" on line 10
2. Page 3, line 9.
Following: "equipment"
Insert: "to the requesting agency tactical team or"
3. Page 3, line 14 through page 6, line 12.
Strike: sections 6 through 9 in their entirety
Re-number: subsequent sections
4. Page 6, line 14
Strike: "(1)"
Following: "through"
Strike: "7"
Insert: "5"
5. Page 6, line 16.
Strike: "7"
Insert: "5"
6. Page 6, lines 17 through 20.
Strike: subsection (2) in its entirety
7. Page 7, line 3.
Following: "effective"
Strike: "January 1, 1990"
Insert: "July 1, 1989"

AND AS AMENDED DO PASS

Signed: Al Disher
Bruce D. Crippen, Chairman

Handwritten:
J.P.
2/16/89
2:40
p.m.

SENATE STANDING COMMITTEE REPORT

February 16, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration SB 367 (first reading copy - white), respectfully report that SB 367 be amended and as so amended do pass:

1. Page 2, line 4.

Following: "contraband"

Insert: ", which for the purposes of [sections 1 through 4] means any property that is unlawful to produce or possess"

AND AS AMENDED DO PASS

Signed: *Bruce D. Clifton*
Bruce D. Clifton, Chairman

*J.C.
2/16/89
3:40
P.M.*

SCRIB367.216

SENATE STANDING COMMITTEE REPORT

February 16, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration SB 377 (first reading copy -- white), respectfully report that SB 377 be amended and as so amended do pass:

1. Page 1, line 22.

Following: "grams"

Insert: ", except items used or intended for use in connection with quantities of marijuana in amounts less than 60 grams"

2. Page 1, line 23.

Following: "~~(2)(d)~~,"

Insert: "except as provided in subsection (2)(d),"

3. Page 3, lines 8 and 9.

Following: "of" on line 8

Strike: remainder of line 8 through "from" on line 9

4. Page 4.

Following: line 5

Insert: "(d) No conveyance or container is subject to forfeiture under this section if it was used or intended for use in transporting less than 60 grams of marijuana."

AND AS AMENDED DO PASS

Signed: _____

(Signature)
Bruce D. Crippen, Chairman

41.0.
2/16/89
3:40
pr.
SCRSB377.216

TESTIMONY BY SENATOR R.J. PINSONEAULT
SENATE DISTRICT 27
IN SUPPORT OF SB 373
The Drug Free Work Place Act of 1989
Before the Senate Judiciary Committee
Wednesday, February 15, 1989

Mr. Chairman, I am testifying today in support of Senate Bill 373, a bill to enact a "drug-free work place."

This legislation was prompted by my limited involvement in 1987 in the enactment of statutory restrictions on drug testing by private employers.

I supported the 1987 legislation, because I wanted to protect the privacy of employees from oppressive actions by private employers. However, I do not shrink from my responsibility to deal with the problems of drug and alcohol use in the work place.

I remain concerned about the ever-pervasive drug and alcohol problems we are experiencing throughout America. Drug use in our schools, our offices, our factories and our homes is tearing at the basic fabric of American society.

According to a recent edition of the U.S. News and World Report:

- * Americans now consume 60 percent of the world's production of illegal drugs;
- * An estimated 20 million Americans use marijuana regularly, and up to 8 million more are cocaine abusers;
- * Illegal drug use in the United States has soared to \$110 billion annually--more than the total earned annually by the American farmer from all their crops;
- * By their mid-20s, 80 percent of all Americans have tried illicit drugs, and 2/3 of the people entering our work force have used illegal drugs;
- * Drug and alcohol abuse on the job has caused \$100 billion a year decline in productivity, through absenteeism, sick leave, accidents and deaths.

One should not assume that Montana is exempt from extensive drug use. A recent survey of 4,361 students in the Billings area revealed the following patterns:

- * For 12th graders, approximately 95 percent have tried alcohol, 42 percent have tried marijuana, 18 percent have experimented with stimulates, and approximately 12 percent have tried cocaine;

Crime Control Board

* Student drug use in Billings was not restricted to a one-time experience. Indeed, within the last 30-days of the Billings area survey, over 70 percent of the students used alcohol, 15 percent marijuana, and approximately 3 percent cocaine.

Drug use in American society begins early. We must do everything possible as a nation to deal with these problems, consistent with protections of individual privacy and guarding against unconstitutional searches and seizures.

close
The purpose of my legislation is to create an exemplary category of employers. These are employers who maintain full-scale rehabilitation programs for their employees. To conduct such programs, it is necessary to find out what may be wrong with employees. If employee performance is faltering, it could be for a variety of reasons, including drug and alcohol use. Unfortunately, the only truly effective way to determine whether drugs and/or alcohol are actual problems for employees is through testing.

edit
My legislation would not allow indiscriminate testing of employees. Rather, it would permit drug and alcohol testing by employers who maintain comprehensive medical programs for their employees. Further, the purpose of these tests is not to weed out employees. Rather, it is to identify those who are experiencing medical problems and to provide them with fully funded programs to deal with those problems.

There are a number of people who have contacted me about my legislation. They are concerned, in the main, about the constitutional rights of employees. I, too, am concerned about constitutional rights. My legislation does not abridge these rights.

I am convinced that an important balancing between privacy and testing must take place if our society is to deal effectively with increasing drug problems. My legislation would extend testing privileges only to employers who have demonstrated good faith concerns about the welfare of their employees.

I urge the Committee to vote a "do pass" on this important piece of legislation.

New answer?
U/O.
Pres's incident w/ella...
- Quarter back -
Sold to under cover agent
ACAINÉ - ACTY BURNER

Steve Browning

SENATE JUDICIARY

EMEND NO. L

DATE 2-15-89

BILL NO. SB 373

SENATE BILL 373
DRUG-FREE WORK ACT
By Senator Dick Pinsoneault

What Does It Do?

This legislation seeks to establish a separate and exemplary classification of private employers who would be allowed to test for alcohol and drug use by their employees or applicants for private employment. The right to test would be restricted only to private employers who satisfy all three of the following conditions:

- (1) The employer must maintain a comprehensive program to provide an alcohol-free and drug-free work environment for the benefit of all of its employees and its customers.
- (2) The employer must provide a fully financed drug and alcohol assistance program for all of its full-time employees.
- (3) In cases where a job applicant has tested positive to drug or alcohol use, the employer--after the passage of a reasonable amount of time--may not use the original positive test results against the job applicant.

SB 373--What is its Purpose?

The principal purpose of SB 373 is to encourage model drug and alcohol programs for which few Montana employers can currently qualify. The bill seeks to establish the goal of a drug-free work environment for all Montana employees. In such an environment, wherever an employee encounters drug or alcohol problems, it would be the employer's responsibility to finance fully the remediation of the employee's problem. In short, testing would not be used as a means for identifying employees to be dropped from the employer's work force. Instead, testing would be used as a means to identify employees who have personal problems that would be dealt with at the company's expense.

To What Extent Does Montana Current Law Allow Private Employers to Test Their Employees and Job Applicants?

The 1987 amendments (§ 39-2-304, MCA) prohibit drug testing of private employees except in those cases where the employment involves hazardous work environments or in cases where the primary responsibility of the employee is security, public safety, or fiduciary responsibility. Except in those limited circumstances, drug and alcohol testing by private employers of private employees or job applicants is prohibited.

How do Montana's Laws Concerning Drug Testing by Private Employers Compare with Other States?

Few states in the United States have enacted statutes that address drug testing of private employees. Nearly all drug testing laws concern public employees. The few private employee statutes that have been enacted concentrate on the care, handling and analysis of test results. Recently, several states enacted statutes restricting the use of drug and alcohol tests for private employees, but in none of these states -- except Montana -- would the type of program contemplated by SB 373 be prohibited. In other words, the type of exemplary program contemplated by SB 373 is currently possible in all states, but Montana.

How do Montana's Laws Governing Drug Testing Compare with the Federal Government?

As a part of the Omnibus Drug Legislation enacted last fall by Congress (PL 100-690, Title 5(d)), the Federal government now mandates all contractors and grantees of federal agencies to certify that they provide "drug-free work places." Under the 1988 Drug-Free Work Place Act, the ultimate consequence of noncompliance is disbarment or suspension of federal contractors or federal grantees. The Drug-Free Work Place Act and its implementing regulations, published on January 31, 1989, do not require contractors or grantees to conduct drug tests.

Is SB 373 Unconstitutional?

No. Federal and state court cases which have found unconstitutional drug and alcohol testing typically concern tests administered either by government officials or, in limited circumstances, by private agents operating under government mandate. In short, both the Federal and state constitutions effectively prohibit unlawful searches and seizures of bodily fluids for drug testing conducted through state action. Even in view of constitutional protections for privacy, there are no constitutional prohibitions against drug testing performed by private individuals where there is no connection with state action or other government requirement.

Drugs, alcohol: "No place in our business"



To test or not to test? Who gets tested? How accurate are the tests? What about employee safety and employee privacy concerns? To understand how these issues are addressed by IBM, Think talked to William Colucci, IBM director, employee relations.

Q. Today, substance abuse, particularly illicit drug use, is receiving increasing national attention and notoriety. What is IBM's position on this subject?

A. Simply stated, substance abuse is a national problem that must be addressed by society through coordinated actions by individuals, government, schools, medical professionals and business. The evidence on substance abuse clearly indicates that the use of non-medically prescribed drugs and alcohol abuse is harmful. For businesses, it is also costly. Safety and judgment can be impaired, interpersonal relationships damaged and productivity lowered.

At IBM, we want to balance our respect for an individual's right to privacy and the personal lifestyle of his or her own choosing against our objective to provide a safe, healthy, productive work environment.

Q. What is IBM's drug policy?

A. First, drugs and alcohol have no place in our business. The use, distribution, sale or possession of any drugs or other controlled substance for non-medical reasons on company premises or in any IBM work environment is prohibited. We consider violations a serious breach of our policy, which normally result in dismissal.

Second, employees under the influence of any nonmedically prescribed drugs are prohibited from company premises or any other IBM work environment.

Q. What does IBM do when we learn an employee has a substance-abuse problem?

A. We consider substance-abuse a medical problem. As with other medical conditions, our aim is to assist the employee in the rehabilitation process while maintaining a safe, healthy work environment.

Q. How does IBM help an employee with this problem?

A. Employees are encouraged to seek assistance from their manager or the IBM medical department. If they prefer, they can go directly to the IBM Employee Assistance Program (EAP) which provides confidential, professional, short-term counseling and referral service to employees, retirees and their eligible dependents on a wide range of personal problems, including alcoholism and drug-abuse. We also have a comprehensive benefits package that has recently been expanded to include coverage of outpatient as well as inpatient program coverage for drug and alcohol treatment.

Q. What are the signals that there might be a drug or substance abuse problem with an employee?

A. Indications of substance abuse could include declining performance, deteriorating attendance, accidents, interpersonal relationship problems or other signs of unusual behavior. Managers attend awareness programs to help them, with the assistance of our medical staff, identify employees who may be experiencing substance abuse problems.

Q. Does IBM test current employees for drug use?

A. We do not routinely test employees.

But if management clearly observes something that could be a manifestation of drug or alcohol abuse, such as deterioration of performance, increase in absenteeism, or unusual behavior which could affect the safety of other employees, the manager might ask the employee to visit the medical department.

After careful evaluation, the medical department may ask the employee to take a test. These situations are dealt with on a case-by-case basis.

Q. Why did IBM initiate a drug screening program for applicants?

A. One of our prime responsibilities is to ensure a safe, healthy, productive work environment for all our employees—including the avoidance of any problems which could be caused by co-workers under the influence of controlled substances. Because of this, we decided to make the use of controlled substances for nonmedical reasons a consideration in our employment decisions.

Q. What drugs does IBM test applicants for?

A. We test for a wide range of drugs, including those commonly abused, such as cocaine and marijuana.

Q. How can IBM be sure the tests are accurate?

A. To ensure total accuracy of test results, we have implemented a very tight control over the chain of custody of the specimen throughout the entire testing procedure. The tests are performed, reviewed and confirmed by one licensed laboratory, which is monitored regularly.

All initial positive results are confirmed by a different testing procedure. We are convinced as to the accuracy of our testing procedures.

Q. Are applicants told beforehand about the drug-screening examination?

A. Yes, our applicants are advised of this requirement early in the employment process. Our application for employment indicates that a test is part of the pre-employment physical examination.

Our recruiters explain this requirement during the interview process, and this requirement also appears on our pre-employment questionnaire.

Q. What if an applicant's test results are positive?

A. A positive finding would have a serious negative impact on an applicant's chances for employment. Drug screening is one component in our overall applicant evaluation process; if an applicant cannot provide a reasonable explanation for a positive finding, that applicant will not be offered a job.

Q. What happens if a highly qualified applicant refuses to submit to a test?

A. We would be unable to consider the

applicant further for employment, as the screening is a required component of our pre-employment process.

Q. Isn't testing an invasion of personal privacy?

A. We don't think so. It's a question of balancing interests. IBM has an obligation to provide a safe work environment and a high quality product or service to the customer. Everyone suffers—employees, stockholders and customers alike—when drug abuse contaminates the work place.

IBM Programs

Following is a list of programs through which IBM and its employees have supported many worthwhile community activities, including fighting substance abuse.

Corporate Contributions

From 1980 through 1986, IBM contributed more than \$1 million to support alcohol/drug-related organizations. These contributions have been directed toward a variety of groups whose efforts are aimed at various aspects of research, prevention and treatment.

Social Service Leaves

This program, started in 1971, has been used by some 900 employees during 1986, with a number of them involved in programs that provide America's youth with healthier lifestyle options, and contribute to community substance abuse prevention/rehabilitation efforts.

Fund for Community Service

This program, started in 1972, has helped fund some 17,000 projects. IBM, through its employees, retirees or their spouses, has contributed some \$28 million. These grants have funded such projects as office equipment for alcohol rehabilitation organizations and training materials for drug abuse prevention seminars.

Time Off for Social Service Activity

Management may approve requests from an employee for paid time off to participate in social service activity for up to 10 working days in a 12-month period.

Help for co-dependents

Co-dependents—a spouse, children, parents, or others close to an addict—are also affected emotionally by an addict's problem. Two support organizations that help co-dependents are: AI-ANON, for co-dependents of alcoholics (1-800-245-4656 in New York State and 1-800-344-2666 for other states); and NARANON, for co-dependents of narcotics addicts (718-237-9557).

"A drug-free workplace"



by Dr. Donald Ian Macdonald

When you're in an epidemic, as this country is now with drug use, no one is immune. IBM employees are no different than major league baseball players, who are no different than doctors. There is a grave problem with drugs in the workplace because that's where most people spend so much of their time.

What is different now from, say, 10 years ago, is that we are now seeing people who have worked themselves up in society become drug users. Cocaine has been called the "yuppie" drug. Many users are the kids of the 1960s who smoked marijuana and began the process of drug dependence. They influence their peers to try cocaine, saying "It's safe, it won't hurt you" and the contagion spreads.

Often drug use in the workplace goes undetected for some time because job performance is

one of the last things to go. A person's marriage may be in shambles, friends lost, but, to support his habit, a drug user needs to work as long as he can. For this reason, it is critical that managers and non-using employees train themselves to detect early signs of drug use, such as Monday absences, changes in performance and accidents on the job.

Many companies are beginning to give drug tests. That certainly sends a message that a company is serious about eliminating drugs from the workplace. But drug testing is *not* a drug policy, and most companies do *not* have a drug policy. It is critical to have one in order to deal with such questions as: what to do with employees who are dealers as well as users, whether to rehabilitate a drug user, whether a rehabilitated user can return to a sensitive job, whether a rehabilitated user should be subject to random drug testing.

A drug-free workplace helps to stem the epidemic we're facing—and to create a drug-free society as well.

Donald Ian Macdonald, M.D., is administrator of the Federal Alcohol, Drug Abuse, and Mental Health Administration.

Statement on SB373 by Ben Haddad, Montana Motor Carriers Association

Mr Chairman, Members of the Committee, My name is Ben Haddad and I'm the Executive Vice President of the Montana Motor Carriers Association. MMCA strongly supports the passage of Senate Bill 373.

Under current Montana law the 325 Motor Carrier Members of MMCA find it ^{themselves is a catch} ~~it~~ ^{impossible} to comply with new rules relating to drug testing recently adopted by Federal Highway Administration.

Montana law prohibits as a condition for employment or continuation of employment any employer to submit a applicant or an employee to a blood and urine test. The current ^{in our opinion,} exceptions in the law do not cover interstate motor carriers. SB373 would correct the situation.

The new Federal Highway Admin rules require drug testing of truck drivers in interstate commerce driving vehicles with a gross vehicle weight rating of 26,001 pounds or more. The regulations require

(2)

The regulations also require biennial testing, reasonable cause testing, random testing and post accident testing.

The rules also require motor carriers to provide employees with education and training on the effects and consequences of substance abuse. Motor carriers are also required under the rules to have employee assistance programs for their employees, similar to those required in Senate Bill 373.

The new rules ~~is~~ ^{went} into effect on December 21, 1988 and need to be implemented December 21, 1989 for motor carriers with 50 or more drivers and on December 21, 1990 for motor carriers with less than 50. A lawsuit has been brought against DOT.

According to information published by the industry

Even though a lawsuit ~~is~~ has resulted in a preliminary injunction and stayed implementation of those portions of the rules pertaining to random drug testing and post accident testing, the pre employment and biennial testing remain. The ruling does not preclude a motor carrier from performing random or post accident drug testing.

John Augustin
My name is ~~Robert Holtsmith~~. I reside at ~~2750 Gregory Drive~~

~~North, Billings, Montana. I am the Manager of the Conoco Billings Refinery.~~ *We support the passage of SB 373.*

Conoco operates a complex 50,000 barrel per day refinery in Billings, Montana that processes crude oil into finished petroleum products for the Northern Rocky Mountain Area. Our facility is located essentially ^{on the edge of} ~~in~~ downtown Billings and dictates that we operate in a safe, efficient, and socially acceptable manner.

Conoco uses extensive interviewing and testing procedures to obtain a qualified work force. We then conduct extensive training to ensure that we have well qualified operators running the Refinery. It is imperative that we have operators with full control of their physical and mental ^{capacities} facilities, since the potential for disaster is high if handled improperly.

One of the tools that Conoco uses to screen applicants is a pre-employment drug test. This drug test is given with advanced notice at the applicant's pre-employment physical. Strict protocol for chain of custody and confidentiality is maintained. If a potential applicant shows a positive drug test, the applicant is allowed to explain any possible circumstances to the Conoco Medical Division, and another drug test may be authorized. If not, the potential applicant is refused employment. The management of the Conoco Refinery only receives notice from our Medical Division that an applicant may or may not be hired.

We do allow applicants who test positive to blood or Urine tests for alcohol or drugs to re-apply after a period of 12 months

-

Conoco has an organized program to maintain an alcohol and drug-free work environment for the benefit of all ~~its~~ its employees and customers. The program recognizes that the use of non-medically prescribed controlled substances is potentially damaging to the employees and should be remedied. Our written policy states that one of the purposes of ~~its~~ ^{the} drug and alcohol program is to prevent and eliminate the abusive use of such substances by ~~its~~ employees. We provide to our employees a bona fide drug and alcohol assistance program that is ^{entirely} paid for by Conoco. ~~We do allow job applicants who test positive to blood or urine tests for alcohol or drugs to re-apply after a period of 12 months.~~

Conoco feels that drug screening is an effective tool to select and maintain top quality operators for a potentially dangerous occupation. Therefore, Conoco supports Senate Bill No. 373. *hopes this committee passes it.*

Conoco has a very positive program for a safe work place & can't use it in MT due to present laws.

OCAW

Oil, Chemical & Atomic Workers
International Union, AFL-CIO



SENATE JUDICIARY

Dan C. Edwards
International Representative

P.O. Box 21635
Billings, MT 59104

406 / 669-3841 (Home)

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2-15-89

SB 373

TESTIMONY OF DAN EDWARDS ON SENATE BILL 373 BEFORE THE SENATE
JUDICIARY COMMITTEE, FEBRUARY 15, 1989.

Good morning. For the record, my name is Dan Edwards. I am an International Representative for the Oil, Chemical and Atomic Workers International Union, AFL-CIO. I am stationed in Billings, but my area of assignment includes the entire State of Montana. I am also speaking on behalf of the Montana AFL-CIO, and the Montana State American Civil Liberties Union. I am here to speak in OPPOSITION to Senate Bill 373.

First, I want to make it very clear that I, and the organizations I am speaking for here today, do not support or condone in any way whatsoever, the use of drugs or alcohol on-the-job, or coming to work under the influence of drugs or alcohol. However, unless it can be demonstrated by reasonable "probable cause" that a worker is impaired on the job, or that a worker's job performance is affected, we believe that workers in the State of Montana have the same rights as any other American against unwarranted employer intrusion into an employee's right to privacy and right to dignity.

SB 373 is a proposed amendment to current Montana Law regarding blood and urine testing of employees and prospective employees, 39-2-304, MCA. At first glance SB 373 might appear to not have any great impact upon the current law. However, it does have a great impact upon the current law--it effectively eliminates the protection the current law offers to employees against unfair and unnecessary drug and alcohol testing by employers. SB 373 is a bad bill.

The main effect of this bill is that all any employer has to do to force drug and/or alcohol testing upon its employees and upon job applicants is to (1) maintain an "organized program", and (2) provide employees a "bona fide" drug and alcohol assistance program, thereby completely eliminating the requirement of the current law which states that in order to require an employee to submit to drug or alcohol testing, the employer must have "reason to believe that the employee's faculties are impaired on the job as a result of alcohol consumption or illegal drug use".

SB 373 also has other serious drawbacks:

1. There is no definition of what constitutes an "organized program". An employer could write down a few words which offer no protection to employees or job applicants of their privacy rights and other rights and call that an "organized program".
2. There is no definition of what constitutes a "bona fide drug and alcohol assistance program". The possibility for abuse here is obvious.
3. An employer could purchase an inferior health insurance policy, which does not offer adequate treatment to get around the requirement of a "bona fide drug and alcohol assistance program".
4. It requires that any drug and alcohol assistance program provided under contract, must be with a hospital. This eliminates employers from contracting with the many excellent free-standing drug and alcohol treatment facilities such as Rimrock Foundation and others which can be found in the State of Montana. I am advised that over one-half of the drug and alcohol treatment facilities in the State of Montana are not connected with a hospital.

Any drug and alcohol assistance program should be required to be provided by a facility which has been approved by the State of Montana, whether free-standing or hospital based.

6. It eliminates the requirement that the employer provide a copy of the drug or alcohol test results to the person tested, unless the person being tested makes a specific request to receive a copy of the results. The vast majority of employees, particularly those not represented by a Union, would not know they had a right to the results and would not make the request.
7. Section (2) (a) of the proposed bill contains much unnecessary, self-serving language.

The current law has served the State of Montana and its employees and employers well. There is no need for this proposed legislation. I urge this committee to give SB 373 a "do not pass" recommendation. Thank you.

**Montana Nurses' Association**

P.O. Box 5718 • Helena, Montana 59604 • 442-6710

February 15, 1989

TESTIMONY ON SB 373

Mr. Chairman, my name is Wilbur Rehmann, I am the Labor Relations Director for the Montana Nurses' Association, a 1,400 member labor organization representing professional Registered Nurses.

The Montana Nurses' Association strongly opposes SB 373. Two years ago we worked very hard with representatives of industry, drug counseling organizations, civil libertarians and other labor organizations to craft a finely-tuned compromise bill, SB 338 sponsored by Senator Boylan and at that time Representative Pinsoneault, which eventually became law. It is a good law that is working, the old adage that "if it ain't broke, don't fix it" clearly applies in this case.

SB 373 is an outright slap in the face to all of us who worked so hard two years ago to reach a compromise and it imposes draconian measures to attempt to correct something that's not broke.

This bill guts the current drug-testing law in the State of Montana, it imposes and interjects the state into an area of private rights that should not be allowed nor should it be desired by employers. Employers should not be required to become police, a job interview should not be structured so that it becomes an "illegal search and seizure".

This bill will turn Montana civil liberties and labor management relations on its head, the world will become topsy-turvy and the sunlight of truth and justice and civil rights will not shine in Montana henceforth.

I urge this committee to give a do not pass to this extremist approach to a non-problem. Please vote no on SB 373.

Pamela J. Crane being first duly sworn on her oath deposes and states as follows:

Due to poor health, I am unable to be there in person to lobby against drug testing. I submit to you my experience with drug testing when applying for employment with a business in Billings.

June of 1988 I applied for a position with a restaurant supply company. My duties would have included setting up and maintaining house displays, customer service and answering phones. I had one interview with the supervisor here and was called a week later and informed I would need to take a pre-job physical. They set up the appointment and informed me where and when to go. I asked what the pre-job physical was. I was told, "Oh, you know, the typical physical, just to see how good of health your in." Upon arrival I was given a urine cup and informed I would need to fill it, with verification from the nurse that would have to accompany me. I refused to have the nurse in the bathroom but did fill the bottle for them. Then they came to me with pieces of paper and ask that I fill them out. That is when I asked what all this was for. The nurse assisting in the physical responded by saying that my employer had ordered drug screening on me. She also repeatedly told me that it was very important I remember all the prescription and non prescription drugs I had done in the last 6 to 8 months. While filling out the form I had been given, I asked when I would receive the results of the drug testing. I was informed then that I would not be given any results of the testing, unless my employer was giving them to me. The testing had been requested by the employer and I had no right to them. "After all, the employer was paying for them," not me.

I received one more interview with a gentleman from the Washington office. It was my understanding this gentleman was the employer who had requested the drug screening. After getting the introductions out of the way, I suggested that for future references the company should at least advise potential employees they were being drug tested. I told him it was humiliating and embarrassing to have a nurse inform a patient by handing them a urine cup and following them into a bathroom to verify the fluid had come from said person. The gentleman told me it was standard company policy and it shouldn't bother me if I had nothing to hide. I had nothing to hide from anyone, but my privacy had been invaded. I was being accused of something that I had done nothing to subject me to such humiliation. I pursued this job for about 6 weeks and was never offered the results of the testing- nor was I offered the job. I feel that because of my strong opinion to inform potential employees of the drug testing, I was dropped from consideration for the job.

SENATE JUDICIARY

EXHIBIT NO. 7, p. 2

DATE 2-15-89

BILL NO. SB 343

After many hours of thought, I feel that my privacy had been invaded and that the company had no right to test me. I had given them no reason to suspect that I was involved with drugs nor was I informed I would be tested. It was clearly unconstitutional and an invasion of my privacy. The fourth amendment guarantees us the right to remain secure in our own person, from unlawful search and seizure. I became guilty of a crime without reasonable cause.

Thank you for your time.

Pamela J. Crane
2509 So. 64th St W
Billings, Yellowstone County, Montana

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"

SENATE JUDICIARY
EXHIBIT NO. 9.01
DATE 2-15-89
BILL NO. SB 353

Amendments to Senate Bill No. 353
First Reading Copy (WHITE)

Requested by Senator Crippen
For the Committee on Judiciary

Prepared by Valencia Lane
February 11, 1989

1. Title, lines 9 and 10.
Following: "ASSISTANCE;" on line 9
Strike: remainder of line 9 through "MCA;" on line 10

2. Page 3, line 9.
Following: "equipment"
Insert: "to the requesting agency tactical team or"

3. Page 3, lines 17 and 18.
Following: "request for" on line 17
Strike: remainder of line 17 through "(1)" on line 18

4. Page 3, lines 18 and 19.
Following: "[section 3]" on line 18.
Strike: remainder of line 18 through "[section 5]" on line 19

5. Page 3, lines 23 and 24.
Following: second "account" on line 23
Strike: remainder of line 23 through "17-7-502," on line 24
Insert: "may be appropriated"

6. Page 4, line 19 through page 6, line 12.
Strike: section 9 in its entirety
Renummer: subsequent sections

7. Page 7, line 3.
Following: "effective"
Strike: "January 1, 1990"
Insert: "July 1, 1989"

Adopted BILL NO. 353
Sp. Rep. B...

1 (b) a person taken hostage;

2 (c) arrests in extraordinary circumstances;

3 (d) civil disorder;

4 (e) terrorist activity;

5 (f) protection of a dignitary; and

6 (g) courtroom security in extraordinary circumstances.

7 (3) "Tactical team" means a small group of highly

8 disciplined law enforcement officers trained to provide a

9 quick and ready response to high risk conditions and

10 situations that go beyond the capabilities of normally

11 trained and equipped officers. With specialized training,

12 tactics, and equipment, this small group of officers

13 provides a greater expectation of resolving incidents

14 without loss of property, injury, or loss of life.

15 NEW SECTION. **Section 3.** Tactical team aiding another

16 jurisdiction. (1) If a tactical incident exceeds the

17 capability of a local law enforcement agency, the agency

18 administrator may request the assistance of a tactical team

19 from another jurisdiction.

20 (2) A tactical team called to another jurisdiction has

21 peace officer status in that jurisdiction under the

22 authority of the requesting agency.

23 NEW SECTION. **Section 4.** Local agency to contact

24 national guard. (1) If a tactical incident exceeds the

25 capability of a local law enforcement agency, the agency

1 INTRODUCED BY _____

2 A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW LOCAL LAW

3 ENFORCEMENT AGENCIES TO REQUEST ASSISTANCE FROM THE NATIONAL

4 GUARD AND TACTICAL TEAMS FROM OTHER JURISDICTIONS DURING

5 TACTICAL INCIDENTS; TO EMPOWER THE GOVERNOR TO AUTHORIZE THE

6 NATIONAL GUARD ASSISTANCE; TO CREATE A VEHICLE TAX TO FUND

7 SITUATIONS DEMANDING SUCH ASSISTANCE; ~~STATUTORY~~

8 ~~APPROPRIATING THE ACCOUNT, AMENDING SECTION 17-7-502, MCA;~~

9 AND PROVIDING AN EFFECTIVE DATE."

10

11

12

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

14 NEW SECTION. **Section 1.** Short title. [This act] may

15 be cited as the "Tactical Incident Assistance Act".

16 NEW SECTION. **Section 2.** Definitions. As used in

17 [sections 1 through 6], the following definitions apply:

18 (1) "Jurisdiction" means the jurisdiction of any law

19 enforcement agency within Montana.

20 (2) "Tactical incident" means any situation in which

21 it is reasonable to expect the possibility of the loss of

22 life or the taking of a hostage unless extraordinary steps

23 are taken. These situations may include but are not limited

24 to:

25 (a) a barricaded gunman;

Jud.
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SB 353
9, p.2

INTRODUCED BILL
SB 353



1 administrator may call the national guard staff duty office
 2 for assistance as provided in [section 5].
 3 (2) The national guard staff duty officer shall inform
 4 the governor of the request.

5 NEW SECTION. Section 5. Tactical incident -- national
 6 ard assistance. (1) Upon request by a local law
 7 enforcement agency administrator, the governor may order the
 8 national guard to provide transportation services and the
 9 use of national guard equipment *to the requesting agency tactical team or*
 10 providing assistance to the requesting agency during a
 11 tactical incident.

12 (2) This section does not give the national guard the
 13 status or authority of peace officers.

14 NEW SECTION. Section 6. Funding -- costs related to
 15 tactical incidents. The attorney general shall authorize the
 16 expenditure of funds from the account created by [section 7]
 17 for all reasonable costs resulting from a request for
 18 tactical team assistance under [section 3] ~~and~~
 19 ~~(2) national guard assistance under [section 5].~~

20 NEW SECTION. Section 7. Tactical incident account.
 21 There is an account in the state special revenue fund. Money
 22 from the tax imposed under [section 8] must be deposited in
 23 the account. The money in the account ~~is~~ *may be appropriated*
 24 ~~appropriated, as provided in 17-502,~~ to the attorney
 25 general to pay costs related to tactical incidents, as

1 provided in [section 6].
 2 NEW SECTION. Section 8. Vehicle tax -- tactical
 3 incident account -- excess. (1) There is a state tax imposed
 4 on vehicles subject to the property tax under 61-3-504(2),
 5 at a rate of 0.5% of the value determined under 61-3-503.
 6 The state tax imposed by this section is in addition to the
 7 tax imposed under 61-3-504(2).

8 (2) The tax must be paid at the same time and in the
 9 same manner as the tax imposed under 61-3-504(2). The county
 10 in which the tax is collected shall forward the tax to the
 11 state treasurer.

12 (3) The taxes collected under this section and any
 13 income and interest from investment of these taxes must be
 14 credited to the account created by [section 7] in order to
 15 maintain a \$500,000 balance in that account.

16 (4) Any amount over the \$500,000 balance in the
 17 account must be deposited in the state general fund, whether
 18 the excess is the result of taxation or investment.

19 ~~Section 9. Section 17-7-502, MCA, is amended to read~~
 20 "17-7-502. Statutory appropriations -- definition --
 21 requisites for validity. (1) A statutory appropriation is an
 22 appropriation made by permanent law that authorizes spending
 23 by a state agency without the need for a biennial
 24 legislative appropriation or budget amendment.
 25 ~~(2) Except as provided in subsection (1), to be~~

1 ~~effective, a statutory appropriation must comply with both~~
2 of the following provisions:

3 (a) The law containing the statutory authority must be
4 listed in subsection (3).

5 (b) The law or portion of the law making a statutory
6 appropriation must specifically state that a statutory
7 appropriation is made as provided in this section.

8 (3) The following laws are the only laws containing
9 statutory appropriations: 2-9-202; 2-17-105; 2-18-812;
10 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304;
11 15-25-123; 15-31-702; 15-36-112; 15-65-121; 15-70-101;
12 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424;
13 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205;
14 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606;
15 19-12-301; 19-13-604; 20-4-109; 20-6-406; 20-8-111;
16 23-5-610; 23-5-1027; 33-31-212; 33-31-401; 37-51-501;
17 39-71-2504; 53-6-150; 53-24-206; 67-3-205; 75-1-1101;
18 75-7-305; 76-12-123; 80-2-103; 80-2-228; 82-11-136;
19 90-3-301; 90-7-302; 90-3-412; 90-4-215; 90-9-306; 90-15-103;
20 section 13, House Bill No. 861, Laws of 1985; and section 1,
21 Chapter 154, Laws of 1987; and section 71.

22 (4) There is a statutory appropriation to pay the
23 principal, interest, premiums, and costs of issuing, paying,
24 and securing all bonds, notes, or other obligations, as due,
25 ~~that have been authorized and issued pursuant to the laws of~~

1 ~~Montana Agencies that have entered into agreements~~
2 authorized by the laws of Montana to pay the State
3 treasurer, for deposit in accordance with 17-2-101 through
4 17-2-107, as determined by the state treasurer, an amount
5 sufficient to pay the principal and interest as due on the
6 bonds or notes have statutory appropriation authority for
7 such payments. (In subsection (3); pursuant to sec. 15, Ch.
8 607, L. 1987, the inclusion of 15-65-121 terminates June 30,
9 1989; pursuant to sec. 10, Ch. 664, L. 1987, the inclusion
10 of 39-71-2504 terminates June 30, 1991; and pursuant to sec.
11 6, Ch. 454, L. 1987, the inclusion of sec. 1, Ch. 454, L.
12 ~~1987, terminates July 1, 1988.~~

13 NEW SECTION. Section 10⁹. Codification instructions.
14 (1) [Sections 1 through 7] are intended to be codified as an
15 integral part of Title 10, and the provisions of Title 10
16 apply to [sections 1 through 7].

17 (2) [Section 8] is intended to be codified as an
18 integral part of Title 61, chapter 3, part 5, and the
19 provisions of Title 61, chapter 3, part 5, apply to [section
20 8].

21 NEW SECTION. Section 11¹⁰. Severability. If a part of
22 [this act] is invalid, all valid parts that are severable
23 from the invalid part remain in effect. If a part of [this
24 act] is invalid in one or more of its applications, the part
25 remains in effect in all valid applications that are

2-15-87
SB 357
p.3

SB 377

Amendments to Senate Bill No. 377 BILL NO. SB377
First Reading Copy (WHITE)Requested by Senator Yellowtail
For the Committee on JudiciaryPrepared by Valencia Lane
February 14, 1989

1. Page 1, line 22.

Following: "~~grams~~"

Insert: ", except items used or intended for use in connection with quantities of marijuana in amounts less than 60 grams"

2. Page 1, line 23.

Following: "~~(2)(d),~~"

Insert: "except as provided in subsection (2)(d),"

3. Page 3, lines 8 and 9.

Following: "of" on line 8

Strike: remainder of line 8 through "from" on line 9

4. Page 4, line 6.

Following: line 5

Insert: "(d) No conveyance or container is subject to forfeiture under this section if it was used or intended for use in transporting less than 60 grams of marijuana."

OK 10, p. 2
2-15-89
SB 377

81st Legislature

LC 1133/01

LC 1133/01

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SENATE BILL NO. 377

1
2 INTRODUCED BY
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AND CLARIFYING
5 THOSE ITEMS SUBJECT TO FORFEITURE BECAUSE OF THEIR
6 CONNECTION TO DANGEROUS DRUG OFFENSES; REMOVING THE
7 MARIJUANA LIMITATION; AND AMENDING SECTION 44-12-102, MCA."
8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
10 **Section 1.** Section 44-12-102, MCA, is amended to read:
11 "44-12-102. Things subject to forfeiture. (1) The
12 following are subject to forfeiture:
13 (a) all controlled substances that have been
14 manufactured, distributed, prepared, cultivated, compounded,
15 processed, or possessed in violation of Title 45, chapter 9;
16 (b) all money, raw materials, products, and equipment
17 of any kind that are used or intended for use in
18 manufacturing, preparing, cultivating, compounding,
19 processing, delivering, importing, or exporting any
20 controlled substance in violation of Title 45, chapter 9;
21 except-items-used-or-intended-for-use-in-connection-with
22 quantities-of-marijuana-in-amounts-less-than-28-grams;
23
24 (c) except-as-provided-in-subsection-(2)(d), all
25 anything enumerated in subsection (1)(a) or (1)(b);

1 (d) except as provided in subsection (2), all
2 conveyances, including aircraft, vehicles, and vessels;
3 ~~that~~ which, that are used or intended for use in
4 unlawfully transporting or in any manner facilitating to
5 facilitate the transportation of anything enumerated in
6 subsection (1)(a) or (1)(b) for the purpose of sale or
7 receipt of such thing;
8 ~~that~~ in which a controlled substance is unlawfully
9 kept, deposited, or concealed; or
10 ~~that~~ in which a controlled substance is unlawfully
11 possessed by an occupant commission of a violation of Title
12 45, chapter 9;
13 (e) all books, records, and research products and
14 materials, including formulas, microfilm, tapes, and data,
15 that are used or intended for use in violation of Title 45,
16 chapter 9;
17 (f) all drug paraphernalia as defined in 45-10-101;
18 (g) everything of value furnished or intended to be
19 furnished in exchange for a controlled substance in
20 violation of Title 45, chapter 9; all proceeds traceable to
21 such an exchange; and all money, negotiable instruments, and
22 securities used or intended to be used to facilitate a
23 violation of Title 45, chapter 9; and
24 (h) any real or personal property constituting or
25 derived from proceeds obtained directly or indirectly from a



1 ~~state-of-a-controlled-substance--in violation of Title 45,~~
 2 ~~chapter 97, that is punishable by more than 5 years in~~
 3 ~~prison; and~~
 4 ~~(1) all real property, including any right, title, and~~
 5 ~~interest in the whole of any lot or tract of land and any~~
 6 ~~appurtenances or improvements, that is used or intended to~~
 7 ~~be used in any manner or part to commit or facilitate the~~
 8 ~~commission of or that is derived from or maintained by the~~
 9 ~~proceeds resulting from a violation of Title 45, chapter 9,~~
 10 ~~that is punishable by more than 5 years in prison. An~~
 11 ~~owner's interest in real property is not subject to forfeit~~
 12 ~~by reason of any act or omission the owner proves to have~~
 13 ~~been committed or omitted without his knowledge or consent.~~
 14 (2) (a) No A conveyance used by a person as a common
 15 carrier in the transaction of business as a common carrier
 16 is not subject to forfeiture under this section unless it
 17 appears that the owner or other person in charge of the
 18 conveyance is a consenting party or privy to a violation of
 19 Title 45, chapter 9.
 20 (b) No A conveyance is not subject to forfeiture under
 21 this section because of any act or omission established by
 22 the owner of the conveyance to have been committed or
 23 omitted without his knowledge or consent.
 24 (c) A forfeiture of a conveyance encumbered by a bona
 25 fide security interest is subject to the interest of the

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1 secured party if he neither had knowledge of nor consented
 2 to any violation of Title 45, chapter 9.
 3 (d) ~~No---conveyance---or---containter---is---subject---to~~
 4 ~~forfeiture under this section if it was used or intended for~~
 5 ~~use in transporting less than 250 grams of marijuana."~~
 6
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 25
 --End--

VISITORS' REGISTER

Judiciary

COMMITTEE

BILL NO. SB 373

DATE 2-15-89

SPONSOR _____

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Dan Edwards	Billings		✓
William Lehmann	Mont. Nurses Assn		✓
RANDCE ROMNEY	AECENTA	✓	
Charles Bruck	Holoman - MT Rotu, I.N.S.S.W	✓	
Steve Browning	IBMA Helena	X	
Nadlean Jensen	AFSCME, AFL-CFO		X
Janette Fallon	Helena	✓	
Joe Weirich	Ch Hosp Programs - Helena	neutral	positive
Mark Creek	Helena		
Toni Niklas Phil Campbell	MEA		X
Terry Miran	MFT		X
Don Jugels	MT Chamber of Commerce	X	
John Augustine	Conoco	X	
Bon Howard	MT Motor Drivers	X	
Carol Brown	Leg. and Institutions		
Don Ragan	TRAY MT	X	
John Thompson	Passes Gold	X	
Pat Melloy	Rimrock Foundation		
Geo M Payne	CD PM	Neutral	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM

JAMES T McLAR

PLEASE LEAVE PREPARED

STATEMENT WITH SECRETARY. MONT JOINT RAIL LABOR LEGISLATION

Joni Cooper

Stone Container Corp X

Ann Scott

Rocky MT Treatment Center ✓

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 2-15 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: Gj. amend failed

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 2-15-89 Senate Bill No. 377 Time _____

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

7 - 3

Rosemary Jacoby
Secretary
Senator

Sen. Bruce Crippen
Chairman

Motion: Yellowtail amend passes 7-3

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 2-15-89. Senate Bill No. 291 Time 12:20

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. Tabled UNAN