

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bruce Crippen, on March 8, 1989,
at 10:00 a.m. in Room 325.

ROLL CALL

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

Members Excused: Senator Joe Mazurek

Members Absent: None

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

Announcements/Discussion: None

HEARING ON HOUSE BILL 312

Presentation and Opening Statement by Sponsor:

Representative Mary Ellen Connelly of Kalispell,
District 8, opened the hearing. She said the request
for the bill came out of a group meeting with district
judges and justices of the peace as a result of a
supreme court case (Andre) on de facto custody. The
bill lays out the criteria that must be met before a
court can modify a prior custody decree, she said. It
provides that, if the custody circumstances have
changed and that the child's living arrangements are
dangerous physically or mentally, the custody
arrangements can be changed. If there is a divorce and
the child had been living with a parent before the
divorce decree, the bill asks that the court consider
that in declaring custody. The bill also clarifies
"prior custody" she said in the best interest of the
child.

List of Testifying Proponents and What Group they Represent:

None

List of Testifying Opponents and What Group They Represent:

None

Testimony:

None

Questions From Committee Members: Senator Jenkins asked for information on the court case cited. Rep. Connelly said the court decided that they would not look at the child's living arrangements prior to the divorce and awarded custody to the other parent.

Senator Jenkins asked if that child had been living with the father and Rep. Connelly said she thought so.

Senator Halligan asked if de facto custody arrangements had been discussed in the House. He also asked if other factors had been discussed, such as current economic situations. Rep. Connelly said that she had talked with Rep. Spaeth who said that all arrangements i.e. education, church, would be looked at in his opinion. The Andre decision said that nothing that had gone on before could be considered.

Closing by Sponsor: Rep. Connelly closed saying she had spoken to many attorneys on the bill and they agreed that it would clarify custody and make their job easier.

HEARING ON HOUSE BILL 248

Presentation and Opening Statement by Sponsor:

Representative Mary McDonough of Billings, District 89, opened the hearing. She said the bill makes private retirement benefits exempt from bankruptcy proceedings. The bill was requested by an attorney in Havre who was head of the bankruptcy division of the State Bar Association. In the 1987 Montana Revised Bankruptcy Code, some of the federal exemptions were opted out. In December, a bankruptcy decision came down from Judge Peterson (Exhibit 1) which said that the MCA includes as exempt numerous public retirement pension and annuity funds; however, no private pensions such as Keoghs or IRAs are listed in statute. This bill would put private retirement on an equal basis with public retirement in the case of bankruptcy. She said that

some amendments might be proposed by the Havre lawyer and she wouldn't oppose them.

List of Testifying Proponents and What Group they Represent:

None

List of Testifying Opponents and What Group They Represent:

None

Testimony:

None

Questions From Committee Members: Senator Pinsoneault asked if the feds had looked through the state's exemption law. Rep. McDonough said she thought so.

Closing by Sponsor: Rep. McDonough closed the hearing.

DISPOSITION OF HOUSE BILL 248

Discussion: Valencia distributed amendments requested by Keith Maristuen to which Rep. McDonough had referred. (Exhibit 2) She explained that #1 was to allow that the person currently receiving benefits can receive benefits in the future.

Senator Crippen questioned the language regarding interest. He commented that it didn't say anything about income coming "in" to the person. He thought it should say "interest in and right to receive benefits from".

Valencia agreed that could be done and added "the individual's benefits from" might be included.

Senator Pinsoneault suggested "the individual's vested interest in" the private or governmental pension.

Valencia suggested "the individual's benefits from".

Senator Crippen said the "right to receive" should remain in the amendment. Valencia said he (the author) of the amendments) was concerned that that would mean right to receive right now. He (the author) was concerned that there was a distinction between those benefits which a person has a current right to receive and those which he will receive in the future, she said.

Valencia said the second amendment amends the amount that you can exclude under the exemption, and the purpose of the amendment would be to prevent an individual from overfunding his account right before he files a bankruptcy petition. It would limit the amount he can exempt. Senator Crippen said that would apply to "prior to a year."

Amendments and Votes: Senator Jenkins MOVED the Crippen suggestion -- that the following language be substituted for the #1 amendment: "interest in or rights to receive benefits from". The MOTION CARRIED UNANIMOUSLY.

Senator Crippen MOVED that Amendment #2 be adopted. The MOTION CARRIED UNANIMOUSLY.

Recommendation and Vote: Senator Beck MOVED that House Bill 248 BE CONCURRED IN AS AMENDED. The MOTION CARRIED UNANIMOUSLY.

HEARING ON HOUSE BILL 71

Presentation and Opening Statement by Sponsor:

Representative Tim Whalen of Billings, District 93, opened the hearing. He said the bill was a housekeeping bill to delete some of the language in Section 13-35-211 as a result of a federal court decision in which the news media challenged the statute that prohibits news media from soliciting people within 200 feet of a voting place regarding how they voted. As a result of that ruling, the election commissioner, Delores Colburg, asked him to carry the bill, he stated.

List of Testifying Proponents and What Group they Represent:

None

List of Testifying Opponents and What Group They Represent:

None

Testimony:

None

Questions From Committee Members: Senator Beck asked what would happen if the bill didn't pass. Rep. Whalen said

he felt it would be challenged again. He said there was a difference between statute and the decision.

Closing by Sponsor: Rep. Whalen closed.

DISPOSITION OF HOUSE BILL 71

Discussion: Senator Jenkins said that the District Court found this to be unconstitutional, but it was left on the books. He said if another state accepted it, then it would go the full circuit and would ultimately go back on the state's books. Senator Halligan disagreed, we would invite litigation if the bill was not passed.

Amendments and Votes: None

Recommendation and Vote: Senator Halligan MOVED that House Bill 71 BE CONCURRED IN. The MOTION CARRIED by a vote of 4 to 3 with Senators Jenkins, Beck and Crippen voting NO.

HEARING ON HOUSE BILL 147

Presentation and Opening Statement by Sponsor: Rep. Tim Whalen of Billings, District 93, opened the hearing. He said that Greg Petesch had asked him to sponsor the bill. It came out of a dispute that arose over who was to be appointed to be executor of an estate where a minor is an heir and the parents were divorced. There was no will, he said. The bill named the custodial parent as a personal representative for the minor child, he said.

List of Testifying Proponents and What Group they Represent:

None

List of Testifying Opponents and What Group They Represent:

None

Testimony:

None

Questions From Committee Members: None

Closing by Sponsor: Rep. Whalen closed.

DISPOSITION OF HOUSE BILL 147

Discussion: Senator Jenkins asked why there was mention of separation in the bill. Senator Halligan said some people prefer to remain separated, and not get divorced. If they aren't getting along, they don't want to live together. They separate living quarters and assets, he said.

Amendments and Votes: None

Recommendation and Vote: Senator Jenkins MOVED that House Bill 147 BE CONCURRED IN. The MOTION CARRIED UNANIMOUSLY.

HEARING ON HOUSE BILL 232

Presentation and Opening Statement by Sponsor:

Representative Dave Brown of Butte, District 72, opened the hearing saying the bill was to revise fees of the clerk of district court and to impose a fee for carrying a concealed weapon. The bill was at the request of the Montana Clerks of Court Association. He said the bill changes the cost of the filing fee for separation of marriage to \$100 -- the same amount as the dissolution of marriage. The complexity of marriage separation is every bit as much work as dissolution on the part of the judicial system, particularly the judge, he stated. Present law provides for a fee of \$60, with the petition to be converted to marital dissolution filing for an additional fee of \$25 if the party so chooses. Filing fee for transcript of judgment, abstract or professional, all equalized at \$25 (p. 2). In general the bill attempts to ask for the actual cost in time and material. Another provision for issuing a permit for carrying a concealed weapon has been added in the bill, he said, on page 6. There was a computation instruction to go on with HB 70 in case it passed. That would have equalized the \$25 fee in as part of a \$125 fee in HB 70. HB 70 is dead, he said, and the committee could disregard that instruction.

List of Testifying Proponents and What Group they Represent:

Tom Harrison, Montana Clerks of Court Association
Scott Turner, representing Charmaine Fisher, Clerk of
the District Court in Yellowstone County

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Tom Harrison said the bill resulted from another fee bill introduced two years ago. He said the clerks of court formed a committee during the interim to attempt to estimate the actual cost. They then drafted this bill, he told the committee. He said that they did consider competitive fee schedules in other fees. For instance, one county has a \$100 marriage license fee. Ten nearby counties have fees as low as \$5, so that was taken into consideration. In addition, they have taken into consideration the fees that go into the battered spouse program, he said.

Scott Turner presented written testimony to the committee. (Exhibit 3)

Questions From Committee Members: Senator Halligan asked if the weapon permits had to be filed every year. Rep. Brown said yes. House Bill 70 had asked for \$125, but that involved lengthy checks by sheriffs and potentially the court. This bill only attempts to cover actual cost, he said.

Senator Halligan asked if the fees went into the general fund of the county and Rep. Brown said yes.

Closing by Sponsor: Rep. Brown closed the hearing

DISPOSITION OF HOUSE BILL 232

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Jenkins MOVED that House Bill 232 DO PASS. The MOTION CARRIED UNANIMOUSLY.

ANNOUNCEMENT: Senator Crippen said that letters concerning House Bill 386 had been received by the committee. (Exhibit 3) He asked that the committee study the letter.

Senator Crippen said that action would be taken on HB 386 and HB 122 at the next meeting.

ADJOURNMENT

Adjournment At: 10:45 a.m.



SENATOR BRUCE D. CRIPPEN, Chairman

BDC/rj

minrj.308

ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date 3-8-89

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

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

March 8, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 248 (third reading copy -- blue), respectfully report that HB 248 be amended and as so amended be concurred in:

Sponsor: McDonough (Hazurek)

1. Page 2, line 4.
Following: "from"
Insert: "or interest in"

2. Page 2, line 8.
Following: "service"
Insert: ", excluding that portion of contributions made by the individual within 1 year before the filing of the petition in bankruptcy, which portion exceeds 15% of the individual's gross income for that 1-year period"

AND AS AMENDED BE CONCURRED IN

Signed: 
Bruce D. Crippen, Chairman

4/10
31815
1:49
p.15

SENATE STANDING COMMITTEE REPORT

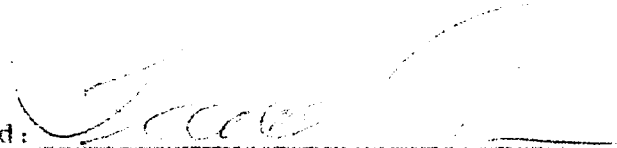
March 8, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 71 (third reading copy -- blue), respectfully report that HB 71 be concurred in.

Sponsor: Whalen (Bishop)

BE CONCURRED IN

Signed: 

Bruce D. Crippen, Chairman

Handwritten note:
D.C. 3/8/89
1:44 p.m.

SENATE STANDING COMMITTEE REPORT

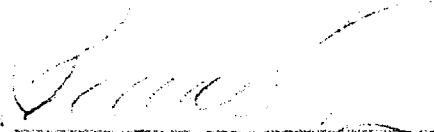
March 8, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 147 (third reading copy -- blue), respectfully report that HB 147 be concurred in.

Sponsor: Whalen (Finsoncault)

BE CONCURRED IN

Signed: 

Bruce D. Crippen, Chairman

Y.C.
3/8/89
1:49
p.m.

SENATE STANDING COMMITTEE REPORT


March 8, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 232 (third reading copy -- blue), respectfully report that HB 232 be concurred in.

Sponsor: Brown, D. (Yellowtail)

BE CONCURRED IN

Signed: 

Bruce D. Crippen, Chairman

Handwritten:
4/1/89
3:44
1: p.m.

McDonough

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA

SENATE FILED
EXHIBIT NO. 1
DATE FILED 3/8/89
BILL NO. HB 248
DEC 27 1988

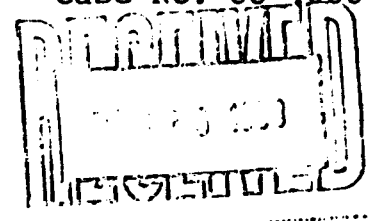
MICHAEL R. ... CLERK
David ...
DEPUTY CLERK

In re

MARVIN REX BELL and
YVONNE CHRISTINE BELL,

Debtors.

Case No. 88-40667



ORDER

At Butte in said District this 22nd day of December,
1988.

In this Chapter 13 case, a confirmation hearing was held November 22, 1988, together with the Trustee's objections to the Debtors' Plan and claimed exemptions. The Debtors were present and represented by Barbara E. Bell and the Trustee was present. At the close of trial, the Court took the matters under advisement. Counsel for the Debtors has filed a brief in support of the Debtors' Chapter 13 Plan and claimed exemptions and this matter is deemed submitted.

The Trustee objects to the Debtors' claim of exemption to an Individual Retirement Account (IRA) and to the feasibility of the Debtors' Chapter 13 Plan based on the Debtors' schedules and statements. The Debtors' Plan proposes to pay the Trustee \$220.00 per month. However, the Debtors' Amendments to their Petition, filed November 3, 1988, show that the Debtors only have \$200.00 available to make Plan payments. The Amendments to the Petition further states that the Debtors have IRA accounts with a balance of \$9,677.00. The Debtors assert that the IRA accounts are exempt

under § 25-13-609, M.C.A., while the Trustee objects and asserts that the IRA accounts are not exempt and, therefore, must be considered to determine whether the unsecured creditors would receive more upon liquidation than under the Plan. 11 U.S.C 1325(a)(4).

Montana has "opted out" of the Federal exemptions which are available to bankruptcy debtors. § 31-1-106, M.C.A. Section 31-2-106, M.C.A., sets forth the exemptions that are available to Montana debtors:

"Exempt property -- bankruptcy proceeding.
No individual may exempt from the property of the estate in any bankruptcy proceeding the property specified in 11 U.S.C. 522(d) except that property specified in 11 U.S.C. 522(d)(10) and that property exempt from execution of judgment as provided in 19-3-105, 19-4-706, 19-5-704, 19-6-705, 19-7-705, 19-8-805, 19-9-1006, 19-10-504, 19-11-612, 19-13-1004, Title 25, chapter 13, part 6, 33-7-511, 33-15-512 through 33-15-514, 33-10-502, 39-51-3105, 39-71-743, 39-73-110, 53-2-607, 53-9-129, Title 70, chapter 32, and 80-2-245."

Section 31-2-106, M.C.A., was overhauled by the 1987 Legislature to include, as exempt, numerous public retirement, pension, and annuity funds. However, no private pensions, such as Keoghs or IRAs are specifically listed in the enumerated Montana statutes. The Debtors' claimed exemption under § 25-13-609, M.C.A., is completely misplaced. None of the items contained in § 25-13-609, M.C.A. are even remotely applicable to an IRA. Therefore, the Debtors' claimed exemption under § 25-13-609, M.C.A. is not allowable. However, this Court will determine whether the IRA is exempt under § 522(d)(10) of the Bankruptcy Code, which is a

Federal exemption specifically allowed Montana Debtors.

Section 522(d)(10)(E) provides:

"(10) The debtor's right to receive --

- (E) a payment under a . . . annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for support of the debtor and any dependent of the debtor, unless --
 - (i) such plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's right under such plan or contract arose;
 - (ii) such payment is on account of age or length of service; and
 - (iii) such plan or contract does not qualify under Section 401(a), 403(a), 403(b), 408, or 409 of the Internal Revenue Code of 1954 [26 U.S.C. 401(a)], 403(a), 403(b), 408, or 409."

An IRA account qualifies under 26 U.S.C. 408, and, therefore, the three exceptions enumerated in 522(d)(10)(E) are not applicable. Neither the Ninth Circuit Court of appeals or the Ninth Circuit Bankruptcy Appellate Panel has directly addressed whether an IRA is exempt under § 522(d)(10)(E). In In re Daniel, 771 F.2d 1352 (9th Cir. 1985), the Court held that the Debtor had to adhere strictly to the California statute exempting a private profit-sharing retirement plan. The Court stressed that the explicit language of the statute relied upon must be used. Id. at 1356. Numerous other courts have held that IRAs or such accounts are not exempt under § 522(d)(10)(E) or applicable state statutes. See, In re Clark, 711 F.2d 21 (3rd Cir. 1983), (held that Keogh plan was

not exempt because payments were not presently "reasonably necessary" for support of debtor or dependents); Matter of Kochell, 26 B.R. 86 (Bankr. W.D. Wis. 1982), (held that only present payment on pension plans are exempt, not the plans themselves); Matter of Parker, 473 F.Supp. 746 (1979), (held that IRAs are under too much control of debtor and are not exempt); In re Mace, 4 B.C.D. 94 (Bankr. Or. 1978), (held that IRA's are not exempt unless reasonably necessary upon filing and confirmation and stated that debtor has too much control over the account to justify exemption). Subsequent to Mace, the Oregon Bankruptcy Court's denial of a Debtor's claimed exemption in a Keogh account was appealed to the Ninth Circuit Court of Appeals. In Herbert v. Fliegel, 813 F.2d 999 (9th Cir. 1987), the Court stated:

"The majority of courts that have addressed the policy issues have concluded that the benefits to be derived from granting an exemption for self-funded plans are outweighed by the 'strong public policy that will prevent any person from placing his property in what amounts to be revocable trust for his own benefit which would be exempt from the claims of his creditors.'" Id. at 1001.

The Court then denied the Debtor's claimed exemption in a Keogh plan and affirmed the Bankruptcy Court's decision. The Oregon Bankruptcy Court subsequently held in In re Masters, 73 B.R. 796 (Bankr. D. Or. 1987), that a fund set aside by the debtor in a Retirement Savings Plan, supplied by the debtor's employer, was not exempt under the rationale of Mace and Herbert v. Fliegel. Id. at 797-800. The majority of the Courts denying an IRA type exemption

base their holdings on whether the funds are reasonably necessary, under the control of the debtor, or are presently being paid out to the debtor. Accordingly, this Court finds that an IRA is exempt under 522(d)(10)(E) if it is shown to be "reasonably necessary" for the support of the debtor and any dependent of the debtor.

This Court in In re Hunsucker, ___ B.R. ___, 6 Mont. B.R. 217, 220 (Bankr. Mont. 1988), adopted the definition of "reasonably necessary" as set forth in Warren v. Taff, 10 B.R. 101, 107 (Bankr. Conn. 1981):

"[T]he reasonably necessary standard requires that the court take into account other income and exempt property of the debtor, present and anticipated . . . and that the appropriate amount to be set aside for the debtor ought to be sufficient to sustain basic needs, not related to his former status in society or the lifestyle to which he is accustomed but taking into account the special needs that a retired and elderly debtor may claim." Hunsucker, at 220.

In Hunsucker, this Court found that a teacher's pension was reasonably necessary for the support of the debtor and the pension was found to be exempt. In this case, no evidence was introduced to the Court that the IRA is reasonably necessary for the support of the Debtors or any dependent of the Debtors. In fact, the evidence shows the opposite. Mr. Bell is a 45 year old retired U. S. Army veteran who is unemployed and receives a pension from the U. S. government. Mrs. Bell is a secretary at the Montana Deaconess Medical Center. The Debtors' amendments to their petition show that they have a monthly take home of \$1,840.00,

together with monthly expenses of \$1,640.00. Accordingly, the Debtors currently have \$200.00 per month above their expenses to fund the Chapter 13 Plan. Therefore, the Debtors have not sustained their burden of proof that the funds from the IRA are reasonably necessary for their support.

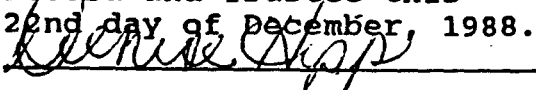
Due to the factual circumstances of this case, the Court will not address whether a debtor needs to be currently receiving payment under the IRA to allow the exemption under § 522(d)(10)(E).

IT IS ORDERED that the objections of the Trustee to the Debtors' claim of exemption in the IRA account is sustained and the Debtors' Chapter 13 Plan is denied confirmation with leave to amend, convert, or dismiss this case within ten (10) days.



JOHN L. PETERSON
United States Bankruptcy Judge
215 Federal Building
Butte, Montana 59701

Copy mailed to Counsel of
Record and Trustee this
22nd day of December, 1988.



Amendments to House Bill No. ~~248~~ NO. HB 248
Third Reading Copy (BLUE)

Requested by Keith Maristuen, Attorney
For the Committee on Judiciary

Prepared by Valencia Lane
March 7, 1989

1. Page 2, line 4.

Following: "individual's"

Strike: "right to receive benefits from"

Insert: "interest in"

2. Page 2, line 8.

Following: "service"

Insert: ", excluding that portion of contributions made by the individual within 1 year before the filing of the petition in bankruptcy, which portion exceeds 15% of the individual's gross income for that 1-year period"

County of Yellowstone

CHARMAINE R. FISHER
CLERK OF THE DISTRICT COURT



3A
3/8/89
HB 232

(406) 256-2860
BOX 35030
BILLINGS, MT 59107

House Bill 232
March 8, 1989
Room 325
10:am
Judiciary Committee of the Senate

Please support HB232. This bill will equalize all judgments. All judgments will be \$25.00. It will also provide a uniform fee for gun permits. A legal separation can be filed for \$60.00, then be converted into a Dissolution with a judgment for \$25.00. There is more work involved and we've lost \$15.00 in the process. The fees generated by these increases would go into the District Court Fund or General Fund for the District Court.

25-1-201

Commencement \$60

Filing complaint intervention \$60

petition for legal separation \$100

MAR 07 '89 17:26 CROWLEY LAW FIRM

P.3/4

Senator Al Bishop
March 7, 1989
Page 2

3. Reference to the "bankruptcy laws" is problematic. There are a number of "bankruptcy laws" which may affect the sale and distribution of property included in bankruptcy estates. There are a variety of circumstances in which estate property may be "sold" or otherwise distributed or conveyed including by auction, by repossession of a secured party, by abandonment of the trustee if the property is of inconsequential value to the estate, as well as by public or private sale by the trustee, a debtor in possession or by a third party with approval of the bankruptcy court. The proposed bill does not begin to address the variety of circumstances which may occur in bankruptcy cases.
4. In many situations there are no records kept of the purchasers of property from a bankruptcy estate.
5. Although debtors are not relieved of personal liability for taxes under certain circumstances, this is an extremely complex area of bankruptcy law. Without substantial research it is impossible to determine whether the proposed bill would be beneficial or detrimental to most debtors in bankruptcy cases.
6. It seems likely that the proposed bill would create havoc in the offices of taxing authorities. There is no mechanism for resolving the innumerable issues which would become apparent if governmental entities attempted to apply this legislation.

After review, I recommend that this bill be killed. The situation which it is apparently intended to rectify arises infrequently; the chaos which would result upon enactment of this bill would affect every debtor in bankruptcy and every taxing authority.

If the intention of the sponsor of the legislation is to provide relief from personal property tax liability to debtors who have been discharged from personal liability under Chapter 7 of the Bankruptcy Code, that objective could be accomplished with language something like the following:

If, on or before the second Monday in July, the department or its agent receives a certified copy of an order of discharge under Chapter 7 of Title 11, United States Code, personal liability for payment of property taxes assessed prior to

Incl in 3-8
x 3-9

SENATE JUDICIARY

EXHIBIT NO. 3

DATE 3/8/89

BILL NO. HB 386

BRUCE R. TOOLE
JOHN M. DETRICH
LOUIS R. MOORE
GARELS F. KNEIG
ARTHUR F. LANEY, JR.
MYLES J. THOMAS
GEORGE C. DALTMOR
DAVID L. JOHNSON
KENN WILSON
ROBERT EDD LEE
HERBERT I. PIERCE, III
RONALD R. LODDERS
CHARLES R. CASIMIRO
LAWRENCE B. COZZENS
STEVEN RUFFALO
ALLAN L. HARELL
JAMES R. SITES
CAROLYN S. GUSTY
STEVEN J. LENNAN
TERRY S. SIEGAR
LAURA A. MITCHELL
SHERRY SCHEEL MATTEUCCI
CHRISTOPHER MANDEN, JR.
MICHAEL E. WEBSTER

500 TRANSWESTERN PLAZA
490 NORTH 31ST STREET
P.O. BOX 2529
BILLINGS, MONTANA 59103-2529
TELEPHONE (406) 252-3441
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MARY BEHN
PATRICK BELL
JOHN T. DYRE
DENNIS NETTINKIN
MICHAEL G. WALLER
SHARON NOVAK
ERIC K. ANDERSON
BRUCE A. FREDRICKSON
JEFF W. HEBBER
JOHN E. SCHYER
RENÉE L. MOONEY
JANICE L. PENDERG
JOE C. MAYNARD, JR.
KELLY JEAN BEARD
MICHAEL J. RIDGWAY

March 7, 1989

Senator Al Bishop
Vice Chairman
Senate Judiciary Committee
Capitol Station
Helena, Montana 59620

Re: House Bill 386: An Act Dividing Liability for Taxes on
Personal Property Sold Under the Bankruptcy Laws

Dear Al:

As you suggested, Valencia Lane called me for comments concerning proposed House Bill No. 386. I have reviewed the bill and I have the following observations:

1. Federal bankruptcy law preempts state law in a number of ways. State legislatures may not impose additional duties on bankruptcy trustees. A trustee's duties are defined in the Bankruptcy Code and trustees are subject only to the direction of the bankruptcy court. The provision in the proposed bill which suggests that a trustee in bankruptcy must provide a verification to a taxing authority is unenforceable and inappropriate.
2. There are four chapters of the Bankruptcy Code which authorize different types of bankruptcy cases. A trustee is not appointed in each type of case. Therefore, any bill which ties benefits to the actions of a bankruptcy trustee would be discriminatory.

Incl in 3-8
x 3-9

SENATE JUDICIARY

EXHIBIT NO. 3

DATE 3/8/89

BILL NO. HB 386

BRUCE R. TOOLE
JOHN M. DIETRICH
LOUIS R. MOORE
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ARTHUR F. LAMAY, JR.
MYLES J. THOMAS
GEORGE C. DALTHORP
DAVID L. JOHNSON
KENN WILSON
ROBERT EDD LEE
HENRY L. PIERCE, III
RONALD R. LOGGERS
CHARLES R. CASHMORE
LAWRENCE B. COZZENS
STEVEN RUFFATTO
ALLAN L. HARELL
JAMES R. SIVES
CAROLYN S. OSTBY
STEVEN J. LEHRMAN
TERRY G. SPEAR
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March 7, 1989

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MICHAEL S. DOCKERTY
MALCOLM M. GOODEN
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MICHAEL G. WALLER
SHARON WOHLE
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JOHN E. SCHYER
RENCE L. MOONEY
JANICE L. PEMBERG
JOE C. MAYNARD, JR.
KELLY JEAN BEARD
MICHAEL J. RIDGEMAN

Senator Al Bishop
Vice Chairman
Senate Judiciary Committee
Capitol Station
Helena, Montana 59620

Re: House Bill 386: An Act Dividing Liability for Taxes on
Personal Property Sold Under the Bankruptcy Laws

Dear Al:

As you suggested, Valencia Lane called me for comments concerning proposed House Bill No. 386. I have reviewed the bill and I have the following observations:

1. Federal bankruptcy law preempts state law in a number of ways. State legislatures may not impose additional duties on bankruptcy trustees. A trustee's duties are defined in the Bankruptcy Code and trustees are subject only to the direction of the bankruptcy court. The provision in the proposed bill which suggests that a trustee in bankruptcy must provide a verification to a taxing authority is unenforceable and inappropriate.
2. There are four chapters of the Bankruptcy Code which authorize different types of bankruptcy cases. A trustee is not appointed in each type of case. Therefore, any bill which ties benefits to the actions of a bankruptcy trustee would be discriminatory.

MAR 07 '89 17:27 CROWLEY LAW FIRM

Senator Al Bishop

March 7, 1989

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entry of the order of discharge shall be extinguished.

If the legislature is not in favor of the idea of eliminating personal liability for these taxes, you might consider reducing the liability by 50%. A bill along the lines I have suggested would be relatively easy to administer, free from legal defects, and would accomplish the purpose of providing relief to persons who have lost their property through a bankruptcy proceeding. The taxing authority would continue to have a lien on property to the extent provided under federal bankruptcy law. There would be some obvious fiscal impact on taxing authorities; however, my guess is that the loss of tax revenue would be minimal.

I hope these comments are beneficial to you and to the committee. If you have any questions or would like to discuss these issues further, please give me a call.

Sincerely yours,



SHERRY SCHEEL MATTEUCCI

SSM/ajr

VISITORS' REGISTER

Judiciary COMMITTEE

BILL NO. _____

DATE March 8, 1989

SPONSOR _____

Bill #
46232
4671

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Scott Turner	Yellowstone County	✓	
Krystin M. Deschamps	Msia. County		

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.
PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 3-8-89 House Bill No. 71 Time _____

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

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Rosemary Jacoby
Secretary

Sen. Bruce Crippen
Chairman

Motion: Be Concurred In
Carried 4 to 3